

**EXHIBIT A**

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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4 In the Matter of:

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6 IRVING H. PICARD, TRUSTEE FOR

7 LIQUIDATION OF BERNARD L. MADOFF

8 INVESTMENT SECURITIES LLC,

9 Plaintiff,

10 v.

Adv. Case No. 10-04336 (SMB)

11 THE ESTATE (SUCCESSION) OF

12 DORIS IGION, ET AL.,

13 Defendants.

14 - - - - - x

15 U.S. Bankruptcy Court

16 One Bowling Green

17 New York, New York

18  
19 August 6, 2014

20 10:07 AM

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23 B E F O R E :

24 HON STUART M. BERNSTEIN

25 U.S. BANKRUPTCY JUDGE

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Hearing re: (cc-19) Defendants Estate (Succession) of Doris  
Igoïn, Laurence Apfelbaum, and Emilie Apfelbaum, Motion to  
Dismiss Adversary Proceeding

Transcribed by: Dawn South, William J. Garling

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17 BY: JONATHAN COOPERMAN, ESQ.

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1 P R O C E E D I N G S

2 THE COURT: All right. Madoff and Apfelbaum.

3 Sorry.

4 (Pause)

5 THE COURT: Go ahead.

6 MR. COOPERMAN: Would you like me to speak from  
7 the podium or here?

8 THE COURT: Yes, please.

9 MR. COOPERMAN: Thank you, Your Honor.

10 May it please the Court, we are here today -- my  
11 name is Jonathan Cooperman from the law firm of Kelley, Drye  
12 & Warren and I represent the defendants in this adversary  
13 proceeding and we're here on our motion to dismiss for lack  
14 of personal jurisdiction and for form non-convenience.

15 Your Honor undoubtedly has seen a lot of Madoff  
16 cases with unique facts. Your Honor, this is one of them.  
17 My clients are a French psychologist and a student, their  
18 names are Laurence Apfelbaum and Emilie Apfelbaum.  
19 Laurence, Your Honor is a female name, just for the record  
20 to be clear.

21 THE COURT: I figured that one out after a while.

22 MR. COOPERMAN: Okay. Thank you, Your Honor. A  
23 lot of people -- a lot of people don't at first.

24 They're French citizens, they live and work and  
25 reside in Paris, France.

1           The trustee makes no allegation that my clients  
2       have any connections anywhere in the United States --

3           THE COURT: Well they have New York accounts  
4       though, right?

5           MR. COOPERMAN: Aside from their BLMIS accounts.  
6       It's important, Your Honor, I want to get to that  
7       jurisdiction, but I want that record to be clear.

8           The trustee attempts to lump together my clients  
9       with Albert Igoi, I-G-O-I-N, who is the late deceased  
10      father of Laurence Apfelbaum.

11          Your Honor, they're very different. Mr. Igoi  
12      died in 1995. At that time his daughter, Laurence, his  
13      granddaughter, Emilie -- Emilie was only 11 years old at the  
14      time -- inherited the BLM -- inherited money and those --  
15      that money largely was BLMIS accounts.

16          Now, Your Honor, at that time Laurence Apfelbaum  
17      was free to choose to invest what she wanted -- to invest  
18      her money where she wanted. Emilie, Your Honor, was 11  
19      years old, and her inheritance was subject to a French  
20      guardianship judge, which is equivalent to a French -- a  
21      family law judge here in New York.

22          The evidence shows, Your Honor, that the French  
23      guardianship judge required that Emilie Apfelbaum invest  
24      half of her money in French treasury bills because that was  
25      a safe investment and that's what --

1 THE COURT: When did she turn 21?

2 MR. COOPERMAN: She was 11 years old in 1995, Your  
3 Honor, so she would have turned 21 in 2006.

4 THE COURT: All right. And she determined to  
5 leave her money in BLMIS at that point, right?

6 MR. COOPERMAN: She did, Your Honor. She did,  
7 there's no question about that, but I'd like to focus a  
8 second on what happened in 1995, because I think that's  
9 relevant to the issue of jurisdiction.

10 The reason is, Your Honor, is that what the French  
11 guardianship -- judge required is for Emilie Apfelbaum, if  
12 she wanted to leave her money with BLMIS then Madoff had to  
13 give guarantees that the money was safe. And what happened  
14 is, Your Honor --

15 THE COURT: Well she could lose five percent. I  
16 think that's what it was.

17 MR. COOPERMAN: That's right, Your Honor. That it  
18 couldn't lose more than five percent in any one year, but  
19 for purpose of jurisdiction what's very important, Your  
20 Honor, is that Madoff came to France -- Paris, France, he  
21 negotiated a special contract which Your Honor has in front  
22 of you, with a French what's called a notaire, which is a  
23 cross I guess between a notary and lawyer.

24 THE COURT: I know the argument, but this isn't a  
25 contract case, this is a fraudulent transfer case. Contract

1 has nothing to do with the trustee's claim, or tell me how  
2 it has something to do with -- not the jurisdictional issue,  
3 but the claim.

4 MR. COOPERMAN: Well, I'm focusing right now on  
5 jurisdiction, Your Honor. I understand the trustee's  
6 theory, but the fact is, is that -- and I want to go through  
7 this with you, all of -- some other facts that go to  
8 jurisdiction if Your Honor will let me --

9 THE COURT: Go ahead.

10 MR. COOPERMAN: -- that merely -- what the cases  
11 hold for jurisdiction is that merely maintaining the account  
12 in New York by itself is not sufficient for jurisdiction.

13 THE COURT: Let me ask you a question. There  
14 wasn't -- I didn't see it in anybody's papers.

15 MR. COOPERMAN: Yes, Your Honor.

16 THE COURT: I see all these withdrawals from the  
17 accounts.

18 MR. COOPERMAN: Understood, Your Honor.

19 THE COURT: How did they come about? Did somebody  
20 make a request for money?

21 MR. COOPERMAN: Yeah. Your Honor, so what I was  
22 going to say is the contacts with New York are largely  
23 because of France you have to pay wealth taxes and --

24 THE COURT: No, no, I'm asking a different  
25 question. If I look at Exhibit B -- I think it's Exhibit B



1 to the complaint --

2 MR. COOPERMAN: Understood.

3 THE COURT: -- it lists a lot of withdrawals --

4 MR. COOPERMAN: Yes, Your Honor.

5 THE COURT: -- with some deposits, a lot of  
6 withdrawals. And the question I had is how did these  
7 withdrawals come about? Did somebody send a request to  
8 BLMIS to withdraw money?

9 MR. COOPERMAN: What was -- there was a request  
10 made, yes, to withdraw money --

11 THE COURT: So every time there's a withdrawal  
12 that means that a request came into BLMIS in New York to  
13 withdraw money.

14 MR. COOPERMAN: That's correct, Your Honor.

15 THE COURT: All right.

16 MR. COOPERMAN: That's correct. So that is  
17 clearly what happened here.

18 I want to call your attention to one thing -- a  
19 couple things on the French language contract and then  
20 address some of the other context aside from calling in to  
21 -- to request money for French wealth taxes.

22 These agreements they're in French, they're simple  
23 one-page agreements, they're very different from the other  
24 BLMIS agreements that have been in adversary proceedings  
25 before this Court. The agreements do not contain a New York

1 choice of law clause, they don't contain the clause  
2 appointing a New York agent, there's nothing in the  
3 agreements of the accounts even being held in New York  
4 beside from Mr. Madoff's address New York is not mentioned.  
5 It's unrebutted, Your Honor, that these particular  
6 agreements are subject -- they were negotiated in France and  
7 they're subject to French law.

8 THE COURT: But it's not a contract. I keep  
9 coming back to the same question. Are you telling me that  
10 if somebody receives a -- well this may answer the question  
11 -- but if somebody receives a fraudulent transfer from a New  
12 York account that's governed by French law?

13 MR. COOPERMAN: Well what I'm saying, Your Honor,  
14 is the differences here is that that's not quite the point I  
15 was trying to make. The difference here is that in many of  
16 the personal jurisdiction cases in Madoff the issue came  
17 down to the defendants signed a Madoff classic account  
18 agreement, and that person whether they be in Europe, Asia,  
19 what have you, that agreement said you subject yourself to  
20 New York jurisdiction.

21 My bigger point here is this is a special one-page  
22 French document which does not contain that.

23 THE COURT: All right. And I agree with you on  
24 that. I've seen those cases. I've also seen other cases  
25 that say simply maintaining an account in New York is

1 enough.

2 MR. COOPERMAN: Well, I want to -- I want to go to  
3 that in one second, Your Honor.

4 THE COURT: Let me ask you the question  
5 differently.

6 MR. COOPERMAN: Please.

7 THE COURT: Are you saying that the choice of law  
8 clause -- New York choice of law clause is a sine qua non of  
9 personal jurisdiction in the case?

10 MR. COOPERMAN: It's one important factor in a lot  
11 of these cases.

12 If I may, Your Honor, let me address the law, then  
13 let me come back to some of the facts, because I think the  
14 law is very important.

15 In -- the trustee's amended complaint states that  
16 jurisdiction in this case is based on CPLR 302(a). That's  
17 right --

18 THE COURT: Actually I had a question about  
19 that --

20 MR. COOPERMAN: Please.

21 THE COURT: -- for both sides.

22 The only claim -- as the law now stands the only  
23 claim that the trustee has is a bankruptcy claim going back  
24 two years. Does the CPLR apply to that or is there some  
25 federal law of specific jurisdiction that applies to that

1 and are they different?

2 MR. COOPERMAN: I don't think, Your Honor, there's  
3 any practical difference, and the reason is, is because the  
4 trustee has not identified any -- because there are none --  
5 any contacts that my clients have anywhere else in the  
6 United States that would support federal jurisdiction. The  
7 only contacts in the entire United States that my clients  
8 have are these accounts here in New York.

9 THE COURT: But under federal non-CPLR specific  
10 jurisdiction law. If somebody never comes into the state  
11 but avails themselves of activities in the state or does  
12 something outside the state that has a consequence inside  
13 the state, which is generally my understanding of the CPLR  
14 specific jurisdiction, does the same law apply under more  
15 general federal specific jurisdiction law?

16 MR. COOPERMAN: Yes, Your Honor.

17 THE COURT: Okay.

18 MR. COOPERMAN: It does. In fact the -- every --  
19 even under the long arm statute the cases the trustee cite  
20 hold that specific jurisdiction requires that the claims  
21 alleged arise out of the federal activities. And that's in  
22 the In re: Bozell (ph) case cite by the trustee.

23 The point is, Your Honor, that in this situation  
24 what we have here is this action does not arise out of the  
25 Apfelbaum's accounts. What it arises out of is Madoff's

1 activities.

2 THE COURT: I thought it arose out of transfers  
3 from the Apfelbaum accounts?

4 MR. COOPERMAN: Well let me read to you paragraph  
5 1 of the amended complaint, Your Honor. It says, "This  
6 adversary proceeding arises from the massive Ponzi scheme  
7 perpetrated by Madoff."

8 Your Honor, in every case that has been cited  
9 either by the trustee or by my clients in the briefs before  
10 you, there is more activity in New York to support personal  
11 -- let me start again. In cases where personal jurisdiction  
12 is found, Your Honor, in every case cited by either the  
13 trustee or myself, there was more activity in New York, more  
14 connections in New York than simply maintaining an account  
15 here.

16 If I can walk you through just a couple of the  
17 cases to show you some examples, Your Honor. In the Maximum  
18 Absolute Return Fund case, which was a Madoff case, in that  
19 case it was a Connecticut-based feeder fund, there was a  
20 BLMIS contract with a New York choice of law clause, and the  
21 court stated, quote:

22 "The Second Circuit has indicated that entering  
23 into a contract with a New York choice of law clause is a  
24 significant factor in a personal jurisdiction (indiscernible  
25 -- 00:10:26), because the parties invoke the benefits and

1       protections of New York law."

2               The Picard versus Chase case, Your Honor, which  
3       was cited by the trustees, there was a designation of a New  
4       York agent and also this was only looking federal contacts  
5       as a whole, there was also a California bank account  
6       maintained.

7               In the Picard versus Comad (ph) Securities Corp.  
8       case, another case cited by the trustees, there was a New  
9       York choice of law clause and also a designated New York  
10      agent.

11              In Malachi versus Lebanese Bank case, which was  
12      cited just -- New York Court of Appeals case, it was cited  
13      in our briefs. You had a situation where a corresponding  
14      bank in New York was getting millions of dollars transferred  
15      here into New York, I think it was on dozens of transactions  
16      in New York, with the express purpose to use the New York  
17      account to benefit the Hezzbollah terrorist group, so --

18              THE COURT: But to benefit the Hezzbollah  
19      terrorist group that may have had something to do with the  
20      causation, the second part of the test, but here when I look  
21      at Schedule B I see a lot of money going in and more money  
22      coming out of the account. So it wasn't a one-time deposit  
23      or a one-time withdrawal, these were very active accounts.

24              MR. COOPERMAN: Your Honor, there is no question  
25      that money came out of the accounts. It's unrebutted in the

1 jurisdictional discovery that every dollar that came out of  
2 the Doris Igoïn account and out of the Emilie Apfelbaum  
3 account were to pay French wealth taxes based on the  
4 presumed value of the Madoff account.

5 THE COURT: But that's -- you know, that's the  
6 unfortunate truth of just about every defendant in every one  
7 of these net profit cases, they all had to pay taxes, and I  
8 guess I assume that they had to withdraw money to pay taxes.  
9 Maybe not as much as your clients had to pay because of the  
10 French tax laws, but it's an unfortunate truth in every one  
11 of these situation.

12 MR. COOPERMAN: Your Honor, I told you about the  
13 law in which the trustees cite where there's more activity  
14 than just maintaining an account in New York.

15 Let me focus, Your Honor, which this is a very  
16 crucial part of our argument, on other cases in which all  
17 that they had was our situation where there was a bank  
18 account in New York and the passive receipt of income from  
19 that account, and the outcome is very different.

20 I call Your Honor's attention to several cases we  
21 cited. First I'll start with the Societe Generale versus  
22 Florida Health Science Center case, this was a 2003 case  
23 decided by Judge Cedarbaum in the South District. In that  
24 case a Florida bonding company which was issuing bonds for a  
25 Tampa-based hospital had a \$12.9 million account here in New

1 York with Societe Generale. The purpose of that account the  
2 court found was to make money for the bonding company. It  
3 had a guaranteed interest rate of seven percent.

4 And what Judge Cedarbaum said, Your Honor, is if I  
5 can quote"

6 "Contrary to Societe Generale's contentions,  
7 maintenance of a bank account in New York is usually  
8 insufficient to confer personal jurisdiction over a non-  
9 domiciliary defendant even in suites arising from that  
10 account."

11 THE COURT: Isn't that pre-Leechy (ph) law though?

12 MR. COOPERMAN: I don't see how it changes though,  
13 Your Honor, because if I can continue to talk about this --

14 THE COURT: Because I think you have to look at  
15 the quality and the quantity --

16 MR. COOPERMAN: Absolutely.

17 THE COURT: -- of the account.

18 MR. COOPERMAN: Absolutely, Your Honor. But I  
19 think what Leechy stood for is that somebody who is not in  
20 New York -- well let me give a different analogy. That if  
21 my clients never dealt with Madoff but only had a French  
22 correspondence bank that's I believe what Leechy stood for.  
23 What Leechy did not stand for is to say that if you just  
24 maintain an account in New York and have nothing else and do  
25 nothing else --



1 THE COURT: I agree with the if you do nothing  
2 else, but I come back to my question that your clients did  
3 more than nothing else, because at a minimum there are  
4 hundreds of deposits and withdrawals over the years in these  
5 accounts, and even if I looked more recently and I don't go  
6 back to 1995, and you're telling me that everyone of those  
7 was proceeded by some sort of request to send money.

8 MR. COOPERMAN: But, Your Honor, if I can also --  
9 I'd like to continue talking about that Societe Generale  
10 case, but before I do I'd address Your Honor to the Divinsky  
11 (ph) versus Kingsford case, a Judge Carati (ph) case from  
12 2008. That was a situation where there were claims to  
13 recovery monies wrongfully -- allegedly wrongfully obtained  
14 by a defendant in Florida as part -- that they received as  
15 part of a New York fraudulent scheme, and the claims were  
16 sought based on the same debtor and creditor laws as the  
17 trustee has asserted in this case against my client.

18 And what Judge Carati said was -- he said, quote:

19 "It is settled however that passive receipt of  
20 allegedly stolen funds absent evidence of knowledge or  
21 intent is an inadequate basis for the court's exercise of  
22 jurisdiction under 302(a)(2)."

23 THE COURT: Knowledge or intent -- knowledge of  
24 the Ponzi scheme.

25 MR. COOPERMAN: Yes. Exactly, Your Honor.

1           So I think that's a very relevant case. It's no  
2       different than with the Société Générale case. I wanted to  
3       call Your Honor's attention to other parts of the Société  
4       Générale case because in that case the Court distinguished  
5       the very type of cases the trustee cites here. The Court in  
6       the Société Générale case talked about other cases where  
7       there was a foreign selection clause, where there was a  
8       promissory note with actually New York connection.

9           And what the Court said is that after the Florida  
10      bonding company in that case deposited the money into New  
11      York, their New York connections were, quote, "limited to  
12      passive acceptance of interest payments and monthly  
13      statements in Florida."

14           THE COURT: I guess I'm hung up on the word  
15      "passive" because you've used it a couple of times. Here,  
16      as I understand it, your clients weren't just receiving  
17      monthly statements and interest payments that were  
18      automatically generated without request. They were  
19      receiving a significant number of payments or checks or wire  
20      transfers over the years.

21           MR. COOPERMAN: With all due respect, Your Honor,  
22      I think that's a distinction without a difference here. I  
23      think what the cases say is that on the one hand, if you  
24      have an account in New York and an out-of-state person does  
25      nothing more than have that account and get monies from that

1 account versus the other cases that the trustee largely  
2 relies on where a much greater deal of activity was done  
3 within New York, which leads me, Your Honor, for -- I'd like  
4 to focus on that because that's the other important part of  
5 my presentation.

6 What the trustee has alleged, they made very  
7 sweeping statements, especially, as Your Honor knows, we had  
8 briefing in 2012 and then we had 18 months of jurisdictional  
9 discovery. If you look especially at the briefs of 2012,  
10 there are sweeping statements made by the trustee that my  
11 clients were, quote, "anything but ordinary investors; they  
12 were acutely aware of the purported activity in the  
13 accounts. They acted deliberately, and so forth."

14 THE COURT: I don't pay attention to conclusory  
15 statements like that. And I do have a question. There's  
16 been a lot of smoke and heat over the years in this case  
17 about the facts and I question whether there's really a  
18 dispute regarding the facts, supposed to the adverbs, the  
19 adjectives, and the conclusory statements. The trustee  
20 basically has a summary of facts in his supplemental memo,  
21 which I guess he filed after the jurisdictional discovery --

22 MR. COOPERMAN: Correct, Your Honor.

23 THE COURT: -- in response to yours, and he cites  
24 a lot to Mrs. Apfelbaum's deposition, and I'm just wondering  
25 if there's any dispute as to those facts.

1 MR. COOPERMAN: Well, there's actually a huge  
2 dispute, Your Honor, because --

3 THE COURT: Okay. So you're tell me there's a  
4 fact -- let me stop you -- and here's an issue I have with  
5 this case. You're telling me there's factual dispute  
6 regarding personal jurisdiction?

7 MR. COOPERMAN: No, I'm not, Your Honor.

8 THE COURT: I just asked you.

9 MR. COOPERMAN: I misstated what I said.

10 THE COURT: Okay.

11 MR. COOPERMAN: There is no dispute. The record  
12 speaks for itself.

13 THE COURT: Well, the record is long at this point  
14 and there are a lot of papers.

15 MR. COOPERMAN: But it's not, Your Honor, because  
16 I think if you examine fairly very sweeping statements made  
17 by the trustee and compare it to the evidence cited, the  
18 evidence doesn't support it.

19 Your Honor, if I can -- just as an example, Your  
20 Honor, the trustee is to show our -- my client's active  
21 participation in New York. The trustee has cited a total of  
22 four documents over a 13-year period. Your Honor, they've  
23 made big statements in 2012, briefing as to what they meant.  
24 All of those statements are demonstrated by future -- by  
25 subsequent discovery not to be accurate.

1           Your Honor, if I could just point to you, three of  
2       those faxes are from 1999. They are all handwritten  
3       documents. The first one is a May 10th, 1999, fax which  
4       simply in that, Laurence Apfelbaum wrote to Frankie  
5       DePasquale (ph) and said essentially the French tax  
6       authorities made a mistake. They undercalculated their tax  
7       and she has to withdraw a lot more money than anticipated.  
8       That's it.

9           A second fax, Your Honor, is an October 12th,  
10      1999, fax, and in that case, what Laurence Apfelbaum  
11      testified was that she was merely telling -- reminding Mr.  
12      DePasquale to sell a French Treasury bill before it matured.  
13      And what the -- the trustee makes a big deal out of it, but  
14      the trustee doesn't cite the testimony to put this in  
15      context.

16           And what that testimony said, Your Honor, was Ms.  
17      Apfelbaum was informed under French law that if a Treasury  
18      bill was held to maturity it was taxed at a high rate, I  
19      think 50 percent. If it was sold the day before maturity,  
20      it was taxed at 25 percent.

21           THE COURT: Well, what does that have to do with  
22      the fact of the contact?

23           MR. COOPERMAN: Because, Your Honor, the -- I  
24      believe -- well, the law provides, as we've cited, that what  
25      the trustee needs to do to establish jurisdiction here is

1 not simply to say there's a maintenance of account, but  
2 somehow that we were active participants in the strategies  
3 of the account and investing, which is what they're trying  
4 to do, Your Honor. And that's why as a total, they cited  
5 four faxes to show that, but that doesn't show it.

6 THE COURT: The trustee's supplemental memorandum  
7 of law --

8 MR. COOPERMAN: Yes, Your Honor?

9 THE COURT: -- lists from pages 5 to 11, what it  
10 calls -- what he calls supplemental statement of facts  
11 derived, I guess, from the discovery -- largely from Mrs.  
12 Apfelbaum's -- Dr. Apfelbaum's deposition.

13 Do the Defendants dispute any of those facts?

14 MR. COOPERMAN: We do, Your Honor. Just give me  
15 one second.

16 THE COURT: But if you do, don't I have to have an  
17 evidentiary hearing to decide the issue?

18 MR. COOPERMAN: Well --

19 THE COURT: That's one of the problems here. I  
20 understand the tension of dragging -- I shouldn't say  
21 dragging -- bringing your clients in to participate in an  
22 evidentiary hearing to prove that they shouldn't be here in  
23 the first place, but how do I resolve this evidentiary  
24 dispute?

25 MR. COOPERMAN: Well, if that's what Your Honor

1 wants --

2 THE COURT: That's the question I have. I'm  
3 asking you.

4 MR. COOPERMAN: Thank you, Your Honor.  
5 I wasn't meaning to be smart there.

6 THE COURT: No.

7 MR. COOPERMAN: The -- in my view, if you look at  
8 the statements made in the trustee's supplemental  
9 memorandum, and then if you look at the evidence and the  
10 factual citations, those factual citations do not support  
11 what the trustee says, and, in fact, Your Honor, if you then  
12 look at our supplemental papers, we put all of these  
13 statements into context.

14 As an example, Your Honor, I just mentioned about  
15 the point where what the trustee is talking about, these  
16 sales of French Treasury bills, and the trustee would  
17 present this as if this was some, you know, a financial guru  
18 who was sitting there saying sell, buy, at different times,  
19 when all that she was doing in context was -- and she  
20 testified, she said if she saw in his statement that Frank  
21 DePasquale, that a Treasury bill was coming up due in a week  
22 and it hadn't been sold, she would let him know to sell it.

23 THE COURT: But I saw another fax or e-mail in  
24 which there was a much more-detailed plan about minimizing  
25 Emilie's taxes.

1 MR. COOPERMAN: Oh, that's a perfect example, Your  
2 Honor, of what I talked about of the record not being stated  
3 properly. Because that fax was part of the trustee's 2012  
4 submission. And if you look at the trustee's 2012  
5 submission, the trustee said that that fax shows -- I wrote  
6 it down here -- quote, "actively directed trading strategy,"  
7 okay?

8 Curious, Your Honor, that the trustee has not then  
9 relied on that fax in their post-jurisdictional discovery, a  
10 briefing, and the reason is it's explained in our post-  
11 discovery brief at pages 20 to 21, because what the  
12 testimony was is Laurence Apfelbaum's tax advisor was trying  
13 to figure out what Bernie Madoff was doing because he put a  
14 put and hold strategy in place, supposedly, to comply with  
15 the Emilie Apfelbaum French law contracts, and you can't  
16 lose more than five percent.

17 What Laurence Apfelbaum testified is that actively  
18 directing strategy memo, simply, her tax advisor dictated it  
19 to her and said, Run it past Madoff; is this what they're  
20 doing? So, you know, there's a sweeping statement that  
21 somehow my client is somehow engaged in active strategy,  
22 but, again, I think the big takeaway that I would ask Your  
23 Honor from this oral argument was to please closely examine  
24 the evidence. I know Your Honor does all the time, but I  
25 think that you will find that our statements and our putting



1 the evidence in context shows this is a French psychologist.  
2 It's not somebody who had a trading strategy.

3 In fact, I think it's also interesting, Your  
4 Honor, for the two days of depositions they took of Laurence  
5 Apfelbaum, nowhere are there in there any quotes about  
6 discussions of her expertise in finances. In fact, Ms.  
7 Apfelbaum testified, quote, "I've never known exactly what  
8 the strategy was. I only noticed that on the monthly  
9 account statements there were dividends or equities. I  
10 don't know anything about the stock exchange. All I know is  
11 that I was told they were either Treasury bills or equities,  
12 stocks. I've never seen anything else."

13 The point is I've gone in various ways here, but I  
14 believe that in order to prove 302 jurisdiction or the  
15 federal specific jurisdiction, it doesn't make a difference  
16 here because only the BLMIS accounts are the only New York  
17 issues here, either way you've got to show that your claim  
18 arises out of those accounts. The case law is -- we've  
19 cited the Dovinsky (ph) case. There's also a case that's  
20 Judge Koeltl's case, the International Customs Associates,  
21 which is cited by the Société Générale case. In that case  
22 you had a situation where Judge Koeltl declined to find  
23 jurisdiction over a Taiwanese company where all meetings  
24 regarding the parties' contract were in Taiwan and it  
25 involved what business the New York company would do for the

1       Taiwanese company and were subsequently, there were only  
2       phone calls into New York.

3               The point is, Your Honor, that all of these cases  
4       say that simply having a BLMIS account here is not  
5       sufficient. What their case arises out of the fraud and  
6       as -- if I can quote one other -- on the late Judge Bayer  
7       (ph) in the online market case which we cited, he states,  
8       quote, "The relevant focus under CPLR 302 is on what the  
9       Defendant did in New York in connection with the cause of  
10      action, not the Plaintiff's actions." So the cause of  
11      action here is the massive fraud that Mr. Madoff  
12      perpetrated.

13              THE COURT: No, the cause of action are the  
14      fraudulent transfers. That's what this case is about.

15              MR. COOPERMAN: That's right and that still, it's  
16      the activity of Mr. Madoff, as opposed to our activity of  
17      our -- any -- our receipt, my client's receipt of those  
18      fraudulent transfers was not here in New York and that's  
19      what Judge Prodding (ph) focused on in the Dovinsky case,  
20      and so we think this is a very, very different situation.

21              I'd like to move on if --

22              THE COURT: I have one question for you.

23              MR. COOPERMAN: Of course.

24              THE COURT: Are any of the jurisdictional facts  
25      implicated in the merits of the case?

1 MR. COOPERMAN: Yes and no, Your Honor.

2 THE COURT: What's the yes part?

3 MR. COOPERMAN: I'm thinking about this. It's a  
4 good question.

5 THE COURT: I'm going to give you a chance to  
6 think about it because if I do decide to have a trial on the  
7 issue of personal jurisdiction, it may depend on whether I  
8 have a separate trial or try it with the merits.

9 MR. COOPERMAN: I see where Your Honor is going on  
10 that. You know, this goes to what I want to talk about  
11 before the forum non conveniens, and I will go out of turn  
12 here because I also want to cover the SIPA matter -- the  
13 SIPA filings.

14 Would Your Honor like me to --

15 THE COURT: Well, that's part of the  
16 jurisdictional argument.

17 MR. COOPERMAN: It is, Your Honor. So, should --

18 THE COURT: You've got the floor.

19 MR. COOPERMAN: Okay. If you don't mind, I would  
20 like to cover SIPA and then go to the forum non conveniens.

21 THE COURT: Okay.

22 MR. COOPERMAN: The trustee has alleged that the  
23 filing of the SIPA forms is, itself, good enough by itself  
24 for jurisdiction and Your Honor --

25 THE COURT: And I wanted to ask you on that one:

1 What happened to the claims that your client submitted? Is  
2 there still a claims that allowance dispute, I guess?

3 MR. COOPERMAN: I believe they were denied. The  
4 trustee may --

5 THE COURT: And the Defendants never objected to  
6 that denial?

7 MR. COOPERMAN: We didn't do anything after that  
8 point.

9 THE COURT: Okay.

10 MR. COOPERMAN: So what happened, Your Honor, is  
11 Laurence Apfelbaum was not represented by counsel at the  
12 time that she filed these SIPA forms; that's her testimony.  
13 The trustee's cases, which they have, have cited do not --  
14 none of them are situations in which a SIPA form filing  
15 gives rise to jurisdiction. The cases they have cited are  
16 different if you submit a bankruptcy proof of claim.

17 THE COURT: So what's the difference?

18 MR. COOPERMAN: Big difference, Your Honor.

19 So the bankruptcy proof of claim, it's clear on  
20 there. Bankruptcy proof of claim, the form has the name of  
21 the court, the title, the docket number, under bankruptcy  
22 rules, Form F9, the form has to say the following statement:  
23 Filing a proof of claim submits the creditor to the  
24 jurisdiction of the Bankruptcy Court --

25 THE COURT: Can I ask you a question?

1           If you were litigating the allowance of your  
2       client's claim, based on what your client had sent in to  
3       Texas or wherever, would you be arguing that this Court  
4       lacks jurisdiction to determine the allowability of that  
5       claim because this is a SIPA case?

6           MR. COOPERMAN: I haven't considered that issue  
7       yet. I mean I --

8           THE COURT: I'm asking you to consider it.

9           MR. COOPERMAN: They might.

10          THE COURT: So you submit a claim and when it's  
11       disputed, you say the Court can't hear it?

12          MR. COOPERMAN: There's a difference, though, Your  
13       Honor. Because the difference is that if I was representing  
14       Mrs. Apfelbaum from day one, I would have talked to her and  
15       we would have perhaps more closely considered what we were  
16       going to do. I might have advised her about what a net  
17       winner is, what a net loser is. I would have given her all  
18       of her options. Frankly, Your Honor -- and I'm not a French  
19       law expert -- but I do not know what options she might have  
20       in France about this. So, you know, I would not only have  
21       given her my thoughts on bankruptcy law, but I would have  
22       involved French counsel.

23          So Your Honor is asking a simple question and one  
24       obvious answer, I guess would be yes, but I think that it's  
25       too simple a question for this situation. There are just a

1 lot of moving parts. The fact is, Your Honor, that unlike a  
2 bankruptcy form where it says -- it says that you should  
3 hire a lawyer -- you should consider it. The form says  
4 you're going to submit yourself to the jurisdiction of the  
5 Bankruptcy Court with the consequences that a lawyer can  
6 explain.

7 Obviously Your Honor has seen those forms before  
8 and, you know, whether you are the most serious investor in  
9 the world or whether you're like my clients, a psychologist  
10 and a student whose second language is English, you'd read  
11 that and you'd say, gotta be careful. There's nothing here  
12 like that, nothing at all in our situation.

13 So the fact is that that SIPA form claim should  
14 not subject a jurisdiction. Again, none of the trustee's  
15 cases --

16 THE COURT: But aren't you just saying she's  
17 ignorant of the law or are you saying that there's some due  
18 process argument somewhere in this case?

19 MR. COOPERMAN: That was an eloquent way to put my  
20 argument, Your Honor, because I think -- well, I know what  
21 the argument is. In order to have jurisdiction, you have to  
22 have a conscious decision to submit yourself to the  
23 jurisdiction of the Court.

24 The case we cited, the In Re Petrucci case, which  
25 was a District of New Jersey case, talked about the fact

1 that even looking at a bankruptcy proof of claim form with  
2 the bells and whistles saying, warning, you may be subject  
3 to jurisdiction, even in that situation, its allowance is  
4 equitable based upon the facts of the case. It's an  
5 equitable decision, even in a bankruptcy proof of claims  
6 situation.

7 And I would say here, Your Honor, if we consider  
8 the facts, you had a French psychologist, no experience with  
9 investing. Clearly at the time she was vulnerable, she just  
10 lost her presumed fortune. She hadn't even consulted an  
11 attorney. What she received actually contrary to saying  
12 warning, you may be sued in New York when she sent something  
13 to Texas, it said SIPA is there to protect you. I don't  
14 think that she understood the difference. That's a big  
15 point, Your Honor, whether you consciously subject yourself  
16 to jurisdiction.

17 And, again, coming back to Your Honor's question,  
18 the more I think about it, it's not a simple answer.

19 THE COURT: I think it is, but why don't you move  
20 on to forum non conveniens.

21 MR. COOPERMAN: Okay. May I say -- before I --  
22 may I say five sentences on magnify?

23 THE COURT: Yeah, I don't know -- I've read the  
24 papers. It's not clear to me what that has to do with this  
25 case, but --

1 MR. COOPERMAN: No me.

2 THE COURT: -- maybe you can save that for  
3 rebuttal.

4 MR. COOPERMAN: Okay. We spent 18 months of  
5 jurisdictional discovery on it. I'm not clear as well.

6 I'll move on to forum non conveniens, Your Honor.

7 THE COURT: Thank you.

8 First question on forum non conveniens: Your  
9 expert says that there's a five-year statute of limitations  
10 on fraud claims. It's now more than five years since  
11 December 11th, 2008 --

12 MR. COOPERMAN: Right.

13 THE COURT: -- so aren't all of these claims time-  
14 barred in France?

15 MR. COOPERMAN: No, Your Honor.

16 This was raised by the trustee in the last  
17 supplemental memo. We have not had a chance to respond to  
18 it. What I would like to do, Your Honor, and it's  
19 noteworthy that they didn't put any sort of affidavit from  
20 their French law expert in about this, but Mr. Quint, I've  
21 talked to him, he's our French law expert, he will say that  
22 in France, statute of limitations is a defense which you can  
23 assert. It's up to the Defendant whether to assert it.

24 THE COURT: Well, the same is true here.

25 MR. COOPERMAN: Well, okay, but I want to make



1 sure that's the law in France. So my point is, Your Honor,  
2 when you have this forum non conveniens dismissal, it's  
3 always based on conditions and as one condition we would, of  
4 course, stipulate that we would not assert or my clients in  
5 France -- I won't be part of it then -- will not assert a  
6 statute of limitations defense.

7 THE COURT: Okay.

8 MR. COOPERMAN: And that is clear, and we would  
9 like the opportunity to put in a supplemental statement if  
10 Your Honor would allow us to do so. For Mr. Quint to  
11 complete the record that shows that, in fact, just like in  
12 America, it's a waivable defense and (indiscernible -  
13 10:42:57).

14 If I can continue forum non conveniens, Your  
15 Honor?

16 THE COURT: I had that initial question.

17 MR. COOPERMAN: Oh, it's a good -- it's a perfect  
18 question, Your Honor. You know, talking about whether  
19 France is an adequate forum, you don't take my word for it,  
20 Your Honor, please take the trustee's word for it. When  
21 they submitted their -- when the trustee submitted his  
22 application for a French law firm, UGCC & Associates, what  
23 he -- the stated reason for hiring -- for this Court to hire  
24 that French law firm was it's necessary -- this is a quote  
25 from their application, "It's necessary to engage special

1 counsel to represent the trustee in connection with  
2 litigation --" one -- and that's my one -- "where French law  
3 is implicated or the Defendants are located in France."

4 Now, clearly, Your Honor, we have the or. The  
5 Defendants here are located in France. That's the exact  
6 stated reason for the trustee.

7 THE COURT: Are you saying it's a concession that  
8 the trustee has agreed to try this case in France?

9 MR. COOPERMAN: No, I think it's a concession,  
10 Your Honor, that this is a very unusual, which is an  
11 understatement, bankruptcy situation where you have  
12 Defendants all throughout the world, and in this situation,  
13 I think it's a concession by the trustee that where  
14 Defendants are in France, it may be well appropriate to have  
15 the trustee's eminent French counsel participate in this.

16 Your Honor, if you look --

17 THE COURT: It certainly may well be appropriate,  
18 but it may also be well appropriate to have their eminent  
19 counsel in New York try the case.

20 MR. COOPERMAN: Well, let me explain why I  
21 think --

22 THE COURT: And the Defendant's eminent counsel in  
23 New York.

24 MR. COOPERMAN: Well, I prefer not to, Your Honor.  
25 But in all seriousness, there are a couple of reasons I

1 think which heavily weigh in favor of France. First of all,  
2 just on UGCC for one second. This is not some counsel who's  
3 been on the back shelf doing nothing. Since our last  
4 October, 2012, appearance before Judge Lifland, they put in  
5 fee applications for \$750,000. I can't tell if that's U.S.  
6 dollars. I can't tell what they're doing because that's not  
7 in the fee application, but for that amount of money they're  
8 either litigating cases just as they said they would or  
9 they're certainly up to speed in order to do so.

10 THE COURT: What does that have to do with forum  
11 non conveniens? I'm sure that the trustee can go out and  
12 hire the finest French counsel --

13 MR. COOPERMAN: What it has to do, Your Honor --

14 THE COURT: -- if he had to.

15 MR. COOPERMAN: -- because ordinarily in a forum  
16 non conveniens situation, the Plaintiff's choice of forum is  
17 given deference. My point here is that the trustee, the  
18 Plaintiff here, has made applications to this Court to say  
19 that, in essence, to say I've got great New York counsel and  
20 I've got great French counsel and I am going to -- when I  
21 have situations when Defendants are in France, I'm going to  
22 use my great French counsel.

23 So my point about saying this, Your Honor, is to  
24 the extent the trustee is going to argue, and has argued in  
25 its papers, that their choice of a New York forum be given

1 deference, it should be in this situation. That's my point,  
2 Your Honor.

3 If I can continue, the public and private factors  
4 strongly weigh in favor of my client, and let me give you  
5 two concrete reasons. First of all, Your Honor, let's talk  
6 about witnesses. When we go to the merits of this case --

7 THE COURT: What are the merits of this case?  
8 This is a strict liability case. It's a fictitious profits  
9 case, isn't it?

10 MR. COOPERMAN: Well, it's not, Your Honor.

11 THE COURT: What are the defenses to a fictitious  
12 profits case?

13 MR. COOPERMAN: It depends on when value was given  
14 to the account. If you --

15 THE COURT: But no value was given beyond the  
16 principal. That's said of law, and maybe there's a time  
17 value of money attributable to it and that is an argument.  
18 I understand that's in the circuit.

19 MR. COOPERMAN: Okay. When the trustee -- if you  
20 read the amended complaint, the trustee would say the value  
21 of this account goes back to the 1970s when Albert Igoine put  
22 in whatever money he did.

23 THE COURT: But that's for the purposes of  
24 determining the net investment method. That's all resolved.

25 All that the trustee can recover, as the law

1 presently stands, is up to the transfers made within two  
2 years of the filing date.

3 MR. COOPERMAN: Right. But there's a value  
4 component in there too, what value was given to -- what the  
5 value was given, and my point is, Your Honor, if you measure  
6 the value from 1970 versus if you measure the value from  
7 when Emilie Apfelbaum, who inherited money, put in 1995, you  
8 come up with a very different net winner versus net loser  
9 equation.

10 THE COURT: I don't understand that. The trustee  
11 had seen the calculations. You haven't told me that you  
12 have evidence that shows different calculations of the cash  
13 in and cash out of the account, so I'm not understanding how  
14 you come up with a different number.

15 MR. COOPERMAN: Well, we haven't gotten to that  
16 point yet, Your Honor. So I see what's in the complaint.

17 THE COURT: The question -- the reason -- well, a  
18 lot of stuff has happened in terms of the law since even the  
19 amended complaint.

20 MR. COOPERMAN: Oh, sure.

21 THE COURT: But, you know, I hear things about  
22 witnesses in France, but to me this is a relatively  
23 straightforward case because the trustee is not alleging,  
24 for example, that your clients knew that BLMIS was a Ponzi  
25 scheme which would open them up or subject them to liability

1 for the principal, as well as the net profits.

2 And in terms of what net profits are and how  
3 they're calculated, that's been resolved by the Second  
4 Circuit.

5 MR. COOPERMAN: Well, it has been resolved by the  
6 Second Circuit, Your Honor, and I don't have a formula right  
7 here in my outline, so I don't want to --

8 THE COURT: It's cash in and cash out over the  
9 life of the account.

10 MR. COOPERMAN: Yeah, but it's also -- yes, Your  
11 Honor --

12 THE COURT: Or at least that's what some other  
13 circuits have said. The circuit -- more circuits didn't  
14 quite say that.

15 MR. COOPERMAN: Right. But there's also a  
16 component of how much value you gave to the account in the  
17 first place.

18 THE COURT: But beyond the cash in, what's the  
19 value?

20 MR. COOPERMAN: It depends on when the cash -- it  
21 depends on when the cash was put in when you measure it  
22 from.

23 THE COURT: Not under the net investment method,  
24 though, that's what I'm saying.

25 MR. COOPERMAN: But the document you're flipping

1 through, Your Honor, brings us back to the 1970s.

2 THE COURT: That's right.

3 MR. COOPERMAN: My point is that's erroneous and  
4 that's what we want to show. That's a different account.  
5 The account that Your Honor -- I can't tell what page you're  
6 on, of course, but --

7 THE COURT: Well, I will say that the account with  
8 most of the transactions which goes back to 1988 doesn't  
9 show any transfers within two years, so chances are, unless  
10 the law changes, the trustee is not going to be able to  
11 recover anything in connection with that account.

12 MR. COOPERMAN: I'm not trying to recover anything  
13 in this position.

14 THE COURT: The trustee is.

15 MR. COOPERMAN: I'm sorry. I thought you said me.  
16 I'm sorry.

17 THE COURT: No, the trustee can only go back --

18 MR. COOPERMAN: I am sorry. I misheard you.

19 THE COURT: -- recover in an amount up to what was  
20 transferred out in the last -- in the two years before the  
21 filing date, although he computed net profits or net losses,  
22 the trustee can go all the way back to the origin of the  
23 account or at least until a Ponzi scheme began.

24 MR. COOPERMAN: Right. But the document you have  
25 before you is a conglomeration of several accounts. The

1 accounts at issue, my client, as I said when I first started  
2 talking, my client's account started in 1995, okay?

3 THE COURT: Okay.

4 MR. COOPERMAN: And the accounts that you have  
5 flipping through -- I don't have that right in front of me,  
6 but you just said 1988, for example.

7 THE COURT: Yeah, but the trustee -- I hear you,  
8 but the trustee hasn't -- the trustee has given me  
9 information regarding four separate accounts. The first  
10 account, which is the one that goes back to 1988 has no  
11 transfers within the last -- within the two years before the  
12 filing date. So unless the law changes, that account is  
13 essentially irrelevant.

14 MR. COOPERMAN: But the trustee's view is that  
15 every single penny that my client had were from day one,  
16 fictitious money that wasn't there. My point is different,  
17 which is that we -- my clients inherited in 1995.

18 THE COURT: All right. But I guess there was an  
19 interaccount transfer which is a separate issue that is  
20 being litigated.

21 MR. COOPERMAN: Okay, Your Honor, but we don't  
22 even think it's an interaccount transfer; it's a separate  
23 account. It may have been an interaccount transfer based on  
24 whatever bookkeeping Mr. Madoff did, but it's very different  
25 from our account. What we would like the chance to prove,



1 Your Honor, is the facts that happened in France, very  
2 relevant to our case. The fact that --

3 THE COURT: But whether or not -- isn't it really  
4 depend on what the books and records of BLMIS show?

5 MR. COOPERMAN: I don't think so, Your Honor, and  
6 let me explain why. It's one thing if, you know, I had a  
7 relative who passed away and the same account, I just  
8 assumed that account. You had a whole different situation  
9 here in 1995 based on the French law, based on the fact that  
10 unless there were negotiations -- unless basically Madoff  
11 satisfied what the French judge was requiring for the Emilie  
12 Apfelbaum account, and, Ms. Apfelbaum testified and it's  
13 perfectly logical, they would have taken the money and gone  
14 elsewhere.

15 I think this is a very unique situation. It's  
16 much different than somebody who just inherited it. My  
17 point --

18 THE COURT: I don't mean to be glib, but your  
19 clients were defrauded by Madoff like everybody else.

20 MR. COOPERMAN: They were, Your Honor.

21 THE COURT: I understand that.

22 MR. COOPERMAN: But in the way it's calculated can  
23 make a difference based upon the value that they gave to  
24 these accounts in 1995.

25 And my point is that the trustee is going to

1 put -- what they would like to do, Your Honor, I think --  
2 and we haven't really addressed the merits here yet because  
3 this is only in jurisdiction -- but I can imagine the  
4 trustee would spend about, you know, 20 minutes of an  
5 evidentiary presentation and say strict liability, that's  
6 it.

7 THE COURT: Right.

8 MR. COOPERMAN: Whereas we envision a much  
9 different situation showing sort of our unique situation and  
10 the choices that our clients had.

11 THE COURT: Well, you mentioned Emilie's  
12 account --

13 MR. COOPERMAN: Yes, Your Honor?

14 THE COURT: -- and it shows that on May 1st, 1995,  
15 a transfer of \$33,150,157 occurred presumably from some  
16 other account. Are you saying that that number is not  
17 correct?

18 MR. COOPERMAN: I am not saying one way or the  
19 other. I haven't done the math.

20 THE COURT: Well, you're making a forum non  
21 conveniens argument based upon the availability of witnesses  
22 and what I'm getting at is whether you have any other  
23 evidence in France or anywhere else which is going to  
24 undercut that assertion?

25 MR. COOPERMAN: I think the -- well, the evidence

1 in France, which I would like to show, is that Emilie  
2 Apfelbaum at the time basically could have taken her money  
3 elsewhere, and had she done that, had she done that for a  
4 year -- had -- just hypothetically, for example, Your Honor,  
5 if the French guardianship judge said take all that BLMIS  
6 money and put it in French Treasury bonds for four years and  
7 then -- and she did that, and then at the end of the four-  
8 year period, again, just hypothetically, she took that money  
9 and she put it into BLMIS, I think we would all be saying,  
10 well, that's when the value of her account should --

11 THE COURT: That's not what happened.

12 MR. COOPERMAN: I'm sorry?

13 THE COURT: That's not what happened.

14 MR. COOPERMAN: I know it's not happened, but what  
15 we're trying to say is that it's a roughly analogous  
16 situation. We would like the chance to show in France that  
17 what happened, this wasn't some bookkeeping quick entry  
18 where Emilie inherited. There was a very conscious decision  
19 going on, a to-ing and fro-ing, so to speak, Your Honor,  
20 with the judge about the -- about how to act.

21 THE COURT: But how does that affect the  
22 computation of the net profits?

23 MR. COOPERMAN: Well, as --

24 THE COURT: For whatever reason, and I will accept  
25 your reason, that BLMIS and withdrawals were made, which

1 based upon the calculations of the trustee under the net  
2 investment method resulted in the receipt of net profits,  
3 how does the reason why you left the money in the account  
4 affect that analysis?

5 MR. COOPERMAN: Because --

6 THE COURT: And I'm not even sure the trustee  
7 disagrees with you or disputes that that's why the money was  
8 left in the account.

9 MR. COOPERMAN: Well, we haven't gotten to this  
10 merits point in very much detail, Your Honor, but I think  
11 the way it does is because there is a component of value,  
12 you know, just hypothetically, Your Honor, if a BLMIS  
13 investor originally put in a hundred million dollars and  
14 took out ten million dollars, you know, that would be  
15 different if he put in a hundred million dollars and took  
16 out two hundred million dollars.

17 And so the value here, it's the say way, that to  
18 us, what's very important is that this is a very unusual  
19 French situation where French law was implicated based on  
20 what the (indiscernible - 10:55:46) was doing at the time  
21 and his allowing the money to -- and the judge allowing the  
22 money to be with --

23 THE COURT: Just, if you can tell me how French  
24 law affects what -- the amount of money that went in and the  
25 amount of money that came out.

1 MR. COOPERMAN: So, I think, Your Honor, that the  
2 French -- what -- my point is more. It goes to the  
3 conscious decisions of my client at the time as to whether  
4 to continue to invest with Madoff or not.

5 THE COURT: That's true in every one of these  
6 cases.

7 The argument I thought you were going to make,  
8 which is made in a lot of these cases, is had they pulled  
9 the money out in 1995, there would be no fraudulent  
10 conveyance.

11 MR. COOPERMAN: Well, that's true, too, Your  
12 Honor.

13 THE COURT: That's argued in every case I have.

14 MR. COOPERMAN: Okay. Well, I guess not  
15 successfully, so I have --

16 THE COURT: But that's not happened. That's not  
17 what happened. I have to deal with what happened.

18 MR. COOPERMAN: I understand. I understand.

19 I think we have not gotten to merits discovery at  
20 all here. We are just talking about personal jurisdiction  
21 and that's the avenue that I would like to go down, and I  
22 don't think -- and, Your Honor, for me to have any defense  
23 in this case that would require French witnesses, I'm not  
24 going to get their testimony and the reason is, is because  
25 the French blocking statute, which has been briefed in this

1 case, the trustee points out that the French blocking  
2 statute will not necessarily prevent my client from  
3 testifying, and Your Honor could -- but there are some cases  
4 potentially where Your Honor could order Laurence Apfelbaum  
5 to testify, despite that.

6 But the fact is that for any non-party witness who  
7 all in France, they will be affected by that.

8 THE COURT: I thought I saw -- and may be it  
9 wasn't in France -- a lawyer who was deposed. Was that in  
10 Switzerland or in France?

11 MR. COOPERMAN: That was in a magnify case, Your  
12 Honor, and it was actually a Swiss attorney who was deposed  
13 in the UK, and so it's not in our case. That's in the  
14 magnify case, Your Honor.

15 So the other reason, Your Honor, about this is two  
16 other reasons, Your Honor, about forum non conveniens. One  
17 is hardship, and I hope nobody minimizes the hardship here.  
18 We are talking about a French -- this is a French person who  
19 doesn't come to the U.S. She speaks English. I will give  
20 you that. She's not comfortable conversing in the situation  
21 like we're having today.

22 THE COURT: Well, she can testify through an  
23 interpreter as she did in her deposition.

24 MR. COOPERMAN: She has lost her money. I  
25 guarantee you, Your Honor, that whatever the fee

1 applications we've put in, in this case, the trustee, I'm  
2 charging a fraction of that amount. This is a huge  
3 imposition. Her means of livelihood now -- she's a  
4 psychologist, having to come here, she would have to give  
5 that up. Her husband is an elderly person; he's 20 years  
6 older. She would have to care for him. Her daughter is an  
7 art gallery worker.

8 THE COURT: Let me ask you a question. I see you  
9 videotaped her deposition once, couldn't we have a  
10 videoconference trial or just videotape her deposition and  
11 use it as if she's an unavailable witness? She doesn't  
12 really have to come in on the merits.

13 MR. COOPERMAN: You know, in theory, Your Honor,  
14 but I look at it a little differently, and the way I look at  
15 it is you're talking about a person who, the day before  
16 bankruptcy, thought they had a lot of money. Now they're  
17 being sued for a lot of money.

18 THE COURT: Unfortunately true of many people.

19 MR. COOPERMAN: Understood. I'm not minimizing  
20 any other person, but my point about this is, is that what  
21 the trustee -- if the trustee's case is successful, this  
22 will be something that will haunt both my clients for the  
23 rest of their lives. They deserve -- I'm all for videotape  
24 depositions. I'm for calls with Courts.

25 But when you're talking about the substance, when

1 you're talking about something of value to a person's  
2 livelihood, I think it's only fair that the person does it  
3 the traditional way. So I think that Your Honor, that  
4 certainly, can you do it? Yes, of course, we can do it.

5 Is it fair and appropriate in this situation to do  
6 it? I don't think so.

7 THE COURT: Well, I mentioned it because you  
8 raised -- and I appreciate the argument -- the cost of  
9 having to come to the United States, and it just seems to me  
10 that there are ways to avoid that costs with videoconference  
11 trials, video depositions, and you use that as her  
12 testimony.

13 MR. COOPERMAN: But you give up something, Your  
14 Honor. You give up -- you give up the fact that -- I've had  
15 many trials, Your Honor, I'm sure you've had them before you  
16 here where the witness tugs on your sleeve and tells you  
17 something that you hadn't thought of. I lose that in that  
18 situation, just as an example, Your Honor.

19 The bigger reason, Your Honor, and I think going  
20 along with the hardship is this case is not going to be over  
21 in New York. This case would have to go to France  
22 afterwards and the reason is, of course, that my clients  
23 have no assets here, none whatsoever. So basically, if we  
24 have a case here in New York and if the trustee is  
25 successful, Your Honor is basically sanctioning two cases,



1 one here and another in France.

2 THE COURT: But that's true every time you have  
3 foreign assets.

4 MR. COOPERMAN: Yes, Your Honor, but -- and  
5 there's a big but here -- and the but is that the trustee,  
6 when the trustee applied to have UGCC as its French counsel,  
7 it gave the exact reason to avoid that. So the exact reason  
8 was given to this Court that the trustee is going to hire  
9 eminent counsel to deal with French Defendants. Frankly,  
10 Your Honor, when you look at the equities and public  
11 interest factors, I think that it's not only fair for my  
12 client, I think a French Court will have whether it's on the  
13 merits or whether it's having forcing a judgment that may  
14 come out of this court, a French court is going to have  
15 great interest in protecting French citizens. Mr. Quint put  
16 in his declaration several pieces of French law where what  
17 Madoff did, in fact, of coming to France and soliciting  
18 business is contrary to French law, these issues are going  
19 to be adjudicated in France, no matter what.

20 So, to me, the question is not only is it more  
21 fair for my client to be in France where she signed the  
22 French contracts, and for all of the reasons that I just  
23 said, but it's fair, frankly, for the trustee. The point  
24 about --

25 THE COURT: The trustee may disagree with you on

1 that.

2 MR. COOPERMAN: Well, I suspect their New York  
3 counsel will, but the fact is that the trustee is -- the  
4 interests of the trustee is to gather assets of the estate.  
5 It doesn't really make a difference whether those assets  
6 were gathered --

7 THE COURT: Would a French court apply U.S.  
8 Bankruptcy fraudulent transfer law?

9 MR. COOPERMAN: I'm not an expert in French law.  
10 I'm not an expert, Your Honor.

11 THE COURT: Maybe that's why the trustee selected  
12 the New York forum. THE COURT: Maybe that's why the  
13 trustee selected the New York forum.

14 MR. COOPERMAN: Could be, Your Honor, I don't know  
15 one way or the other, I think it's just easier because they  
16 sued an awful lot of people here. But the fact is, is that  
17 there are avenues in France, and whether -- you know, if --  
18 and I'm no expert in French law, but I assume that if  
19 whatever -- if whatever New York bankruptcy law is, is  
20 contrary to French law, whether this be France, England,  
21 Germany, what have you, that would be a consideration into  
22 whether to enforce a judgment or not, just as it is here in  
23 the United States.

24 So, you know, I think the point is -- what I'm  
25 trying to say is that the trustee made a conscience decision

1 to apply to this Court and say I'm going to have eminent  
2 counsel in both ways, and the eminent counsel they said was  
3 for exactly this situation, Your Honor. If I could just say  
4 it one more time because I think it's important. Their  
5 application says that they're going to use French -- they  
6 may use -- not going to -- but may use French counsel when  
7 French law is implicated or when defendants are located in  
8 France.

9 So based on all of those, Your Honor, the reasons  
10 and other reasons I've said, we respectfully ask that the  
11 case be transferred, and I'd respectfully ask again the  
12 opportunity to put in an affidavit from -- a declaration  
13 from Mr. Quinn about the statute of limitations --

14 THE COURT: Is that really necessary? Because  
15 you're telling me that if I agreed with you I could still  
16 grant the motion on the condition that the defendants waived  
17 the statute of limitations defense, put this case in  
18 suspense, and if they don't just keep it open so there's no  
19 statute of limitations problem.

20 MR. COOPERMAN: We can certainly do that. I just  
21 wanted Your Honor to have the comfort of knowing that that's  
22 what French law was.

23 THE COURT: Okay.

24 MR. COOPERMAN: Thank you, Your Honor.

25 MS. COLE: Good morning, Your Honor.

1 THE COURT: Good morning.

2 MS. COLE: Tracy Cole for the trustee.

3 THE COURT: Go ahead.

4 MS. COLE: I just wanted to respond a little bit  
5 to some of the things that Mr. Cooperman was discussing.

6 As Your Honor recognizes this is a fraudulent  
7 transfer case, there -- currently as the law stands right  
8 now we are only suing for the two-year fraudulent transfer  
9 of fictitious profit, there's no allegation of bad faith,  
10 it's a strict liability case, the evidence and the witnesses  
11 are all in New York.

12 I don't believe that the crucial facts are in  
13 dispute here. They -- they acknowledge that they've  
14 received -- the two-year number is \$25 million.

15 THE COURT: Well let's talk about the contacts  
16 that these defendants have with the United States.

17 MS. COLE: Sure.

18 THE COURT: Go ahead.

19 MS. COLE: The contacts include that they have --  
20 they've received the \$25 million within the last two years  
21 of the transfers, they directed -- they know -- well let's  
22 go back.

23 THE COURT: But they received it in France.

24 MS. COLE: They did receive it in France, but the  
25 transfers came from New York, and they knowingly invested in

1 New York.

2           So when -- when Albert Igoine died in 1995 they had  
3 Bernie Madoff as is uncontested come out for the purpose of  
4 allowing them to maintain these accounts in New York. And  
5 the account agreements that they executed, it's important  
6 because that's come up a lot, the account agreements that  
7 they executed don't specify any choice of law whatsoever,  
8 but what they do specify is that the client wishes to make  
9 certain securities investments through Madoff, who's located  
10 in New York, that Madoff was to make these, they've  
11 requested specific insurances and conditions that he's  
12 willing to give, that Madoff will invest these funds and  
13 securities listed on the United States stock market, and to  
14 invest the returns therefrom in the clients' behalf, and  
15 that he will be prepared -- he will be paid a commission  
16 based on UST bills and a share of those and in accordance  
17 with the U.S. registered broker/dealer law.

18           So the agreement contemplates that this will be  
19 investment of a brokerage account in New York, that they  
20 will be putting money in, directing investments into it, and  
21 that they will be receiving transfers from it, and that  
22 firmly establishes in itself personal jurisdiction under law  
23 of this case and CPLR, and I don't think any of that is in  
24 dispute.

25           The case law that Mr. Cooperman was discussing, he

1 talked a lot about just maintaining an account and passive  
2 receipt of income. That's not what this case is about.

3 He cited one case, the Societe Generale case was a  
4 correspondence bank account case which even under New York  
5 law apparently having a correspondent bank account does  
6 appear to subject you to jurisdiction, but that's not what  
7 we're dealing with here, we're dealing with a brokerage  
8 account where they're actively seeking to invest in the  
9 United States, actively seeking to benefit from that  
10 investment, make profit from that investment, and are in  
11 fact receiving the profits from that investment.

12 The Divinsky case that he talked about where he  
13 talked about the passive receipt of funds, that was under  
14 the tortious activity prong of the CPLR, that wasn't a case  
15 like this is where we're talking about transacting business  
16 in the State of New York, and that's what was happening  
17 here.

18 There's no case law that I'm aware of that  
19 suggests that purposefully investing in a brokerage account  
20 in New York and taking the money out of that brokerage  
21 account over a period of years doesn't subject you to the  
22 personal jurisdiction of this Court. And I don't believe  
23 any of those facts are in dispute. I don't think there's  
24 any need for an evidentiary hearing.

25 For example, I think one of the things

1 Mr. Cooperman talked about was well, there are only a few  
2 documents so the trustee is incorrect when he says that --  
3 when he characterizes Ms. Apfelbaum's activity in her  
4 account. But I think what he's objecting to is our  
5 characterization. I don't think it's disputed, she  
6 testified that she communicated with Mr. (indiscernible -  
7 01:00:52) at least twice a year to make sure that he was on  
8 top of the accounts. She was directing withdrawals of the  
9 accounts from the accounts. And she was making sure that  
10 they complied with the rules that she thought were necessary  
11 to maximize her advantage and minimize her tax consequences.

12 So I think he thinks that that characterization --  
13 he doesn't like our characterization, he thinks the fact  
14 that it had to do with tax consequences in France should  
15 matter, but those are a legal argument. The facts I don't  
16 believe are in dispute.

17 I want to be clear, something -- he said something  
18 was not contested. Anything about their tax liabilities or  
19 what they used the money for we cannot attest because we  
20 have not seen their financial records or their tax returns.  
21 They have withheld those based on the French blocking  
22 statute. We do intend to litigate that when we get to the  
23 merits of this case, but that has nothing to do with  
24 personal jurisdiction right now. I just wanted to be clear  
25 when he says it's unrebutted or undisputed we don't have

1 evidence on it.

2 I think he made a reference to French treasury  
3 bills. I just want to be clear the bills in this case were  
4 all U.S. treasury bills.

5 THE COURT: I thought that the French court  
6 required that 50 percent of Emilie's account be invested  
7 into French treasury bills?

8 MS. COLE: Those were taken out of Madoff.

9 THE COURT: There was nothing was there? There  
10 were no actual investments were there?

11 MS. COLE: That money was taken out of Madoff and  
12 that's not the subject of this lawsuit.

13 THE COURT: Okay. Okay.

14 MS. COLE: So the half that remained in Madoff is  
15 the subject of (indiscernible - 01:02:21).

16 Right. Similar with the trading strategies. I  
17 don't think that there is a dispute that, you know, how  
18 sophisticated she was about trading strategy --

19 THE COURT: Well but you see there is and that's  
20 because you make the statement that they were ordered. I  
21 guess you made the statement that they were sophisticated  
22 investors, and that's when I say it's not clear to me  
23 whether there's a dispute regarding the basic facts that she  
24 wrote three faxes or that she requested withdrawals on some  
25 basis or any of the other stuff you have in your



1 supplemental memorandum.

2 MS. COLE: Not in the supplemental memorandum. I  
3 think the supplemental memorandum is based on the discovery  
4 that we took. We -- the statement she was a sophisticated  
5 investor, we definitely have the facts showing that she's  
6 trying to figure out the strategy of the account.

7 THE COURT: But that's a conclusion.

8 MS. COLE: But that conclusion, right, you can  
9 disagree with the conclusion, but I think the facts  
10 underlying our conclusions are not in dispute.

11 The forum non-convenience argument I think Your  
12 Honor understands. This is a -- this is a fraudulent  
13 transfer case, this has nothing to do with anything going on  
14 in France. The agreement doesn't transform this into some  
15 kind of French case.

16 For the record our hiring of a French counsel was  
17 not a concession that we intend to go to a foreign  
18 jurisdiction every time that one of our defendants is in a  
19 foreign jurisdiction, if there's an avoidance action it  
20 belongs here and we intend to litigate it here and we have a  
21 right to do that. Our choice of forum. There's been no  
22 suggestion that there was an improper impropriety in our  
23 choice of forum.

24 These are all inter-account transfers. I believe  
25 the argument that Mr. Cooperman was trying to make is the

1 argument that was rejected in the antecedent debt decision.  
2 A defendant named Hinti (ph) made a similar argument that  
3 his -- he had entered into a divorce settlement with his  
4 wife, that but for Madoff's representations he would have  
5 withdrawn the money from BLMIS and would have taken that  
6 divorce settlement somewhere else, but because Madoff  
7 persuaded him to keep the money in BLMIS it was funded as an  
8 inter-account transfer and that that should be something  
9 different and treated differently, and that was rejected in  
10 (indiscernible - 01:04:39) antecedent debts decision.

11 THE COURT: I don't know what the argument is.

12 MS. COLE: But I don't believe that it requires a  
13 separate -- a separate case.

14 Unless you have further questions about the  
15 record.

16 THE COURT: No.

17 MS. COLE: Okay.

18 THE COURT: I'll give you the last shot,  
19 Mr. Cooperman, not that there's much to respond to.

20 MR. COOPERMAN: No, there's not. Actually, Your  
21 Honor, I -- one question I thought Your Honor was going to  
22 ask Ms. Cole was on UGC are they litigating any cases in  
23 France?

24 THE COURT: But how is that relevant?

25 MR. COOPERMAN: Because she just said that we, the

1 trustee, wants to litigate everything here in the United  
2 States, so I don't know the answer to that, I can't tell  
3 from the fee application --

4 THE COURT: Well but how is it relevant?

5 MR. COOPERMAN: Because I think it undercuts the  
6 trustee's current argument that everything should be in the  
7 United States, forum non-convenience is a discretionary  
8 situation where the judge can have discretion, and if the  
9 French trustee has -- I mean, I'm sorry -- if the French  
10 counsel is litigation cases there and the trustee has hired  
11 the -- you know, French counsel and the application for that  
12 very purpose I think it is relevant to say it can be done.

13 THE COURT: Well obviously -- obviously the  
14 trustee has hired French counsel.

15 MR. COOPERMAN: Obviously.

16 THE COURT: Obviously the trustee is not  
17 litigating this case there.

18 MR. COOPERMAN: I understand.

19 THE COURT: And I guess what you're saying is it's  
20 equally convenient for the trustee to litigate there as  
21 here.

22 MR. COOPERMAN: That's correct.

23 THE COURT: Whereas the same is not true of your  
24 clients.

25 MR. COOPERMAN: That's correct, Your Honor.

1 THE COURT: I understand.

2 MR. COOPERMAN: I'm violating every -- yeah, I'm  
3 -- that's it.

4 The only other thing I'd want to say, Your Honor,  
5 is the Divinsky case, it's under a different prong of CPLR  
6 302(a); however, it still requires the same arising under as  
7 we said as in any of the other cases. It's a very on point  
8 case.

9 THE COURT: But my recollection of the tort  
10 provision in the CPLR is it had to have foreseeable  
11 consequences in the state that's applicable to the CPLR  
12 provision a long time, but that's my --

13 MR. COOPERMAN: They are different --

14 THE COURT: -- but there is a distinction or  
15 difference between the tort long arm jurisdiction and the --

16 MR. COOPERMAN: I think it's a slight --

17 THE COURT: -- general long arm jurisdiction.

18 MR. COOPERMAN: I think it's a slight distinction  
19 because the practical -- the practical effect is in both  
20 situations unlike general jurisdiction you're looking at the  
21 event in New York and does the claim arise out of that event  
22 in New York? The tort is saying it differently, but that's  
23 really what it comes down to.

24 THE COURT: Okay.

25 MR. COOPERMAN: And the last thing I would say,

1 Your Honor, is again, Your Honor looks like you're very  
2 thoughtful about this. I would simply ask that to the  
3 extent you think there's any dispute on the facts that to  
4 please carefully look at the record evidence, because I do  
5 not believe it supports a lot of what Ms. Cole said about  
6 our act of involvement and what we did.

7 THE COURT: All right. Let me try this with the  
8 facts to avoid the possible need to bring your clients in,  
9 although this is not a motion for summary judgment, I'm  
10 going to adopt that procedure.

11 I'm going to ask the trustee to submit a statement  
12 of what he considers to the material jurisdictional facts.  
13 Avoid the adverbs, avoid the adjectives, avoid the  
14 conclusory statements, with a citation to some evidence that  
15 I already have. I'll give you a chance then, Mr. Cooperman,  
16 to either say, yeah, I admit that that's what the fact is,  
17 add additional facts or deny, but explain if you're going to  
18 deny a citation to authority.

19 MR. COOPERMAN: Sure.

20 THE COURT: If I can resolve it that way and I  
21 don't need to have a further evidentiary hearing that's  
22 fine, but if there are disputes regarding material issues of  
23 fact then we'll have to talk about a practical way to -- you  
24 know, to deal -- to resolve that issue.

25 MR. COOPERMAN: It seems very fair to me, Your

1 Honor.

2 THE COURT: All right.

3 MR. COOPERMAN: When would you like the  
4 submissions?

5 THE COURT: That's what I'm going to ask. When  
6 can you submit -- all I want is a statement, each separately  
7 numbered paragraphs, short statement with the citations of  
8 authority of the undisputed material facts regarding  
9 personal jurisdiction?

10 MS. COLE: Just vacation schedules.

11 THE COURT: Okay.

12 MS. COLE: Just one second. Sorry.

13 THE COURT: This case has been going on for years.  
14 I appreciate the fact that it's August.

15 MS. COLE: Two weeks just because of vacation  
16 schedules would be helpful.

17 THE COURT: All right. Let's say two weeks from  
18 today is the 20th. And when can you submit your response?

19 MR. COOPERMAN: May I just turn this on to look at  
20 my calendar a second?

21 THE COURT: Sure.

22 MR. COOPERMAN: I'm happy to report, Your Honor,  
23 that the brains behind the operations, Ms. Clarkdale (ph),  
24 is getting married in September.

25 THE COURT: Congratulations.

1 MS. CLARKDALE: Thank you.

2 MR. COOPERMAN: So I want to make sure --

3 THE COURT: So it'll be before that.

4 MS. CLARKDALE: Before then, yeah.

5 MS. COOPERMAN: I don't think she wants to do this  
6 on her honeymoon. How about by September 5th, Your Honor?

7 THE COURT: That's fine.

8 MR. COOPERMAN: Okay. Yeah, that's perfect.

9 THE COURT: Okay. And then I'll deem the matter  
10 submitted.

11 MR. COOPERMAN: Thank you, Your Honor.

12 THE COURT: Thank you.

13 MS. CLARKDALE: Thank you, Your Honor.

14 THE COURT: Unless I need a further conference  
15 regarding the facts.

16 Thank you very much.

17 MR. COOPERMAN: Thank you, Your Honor.

18 (Whereupon these proceedings were concluded at 11:16  
19 AM)

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C E R T I F I C A T I O N

We, Dawn South and William J. Garling, certify that the foregoing transcript is a true and accurate record of the proceedings.

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Dawn South

AAERT Certified Electronic Transcriber CET\*\*D-408

Veritext

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Date: August 7, 2014



<b>&amp;</b>	<b>20th</b> 61:18	<b>accounts</b> 5:3,5,15	<b>agent</b> 9:2 13:4,10
<b>&amp;</b> 3:12,13 4:12 32:22	<b>21</b> 6:1,3 23:11	7:17 9:3 11:8,25	<b>agree</b> 9:23 16:1
<b>0</b>	<b>25</b> 20:20 51:14,20	12:3 13:23,25 16:5	<b>agreed</b> 33:8 50:15
<b>00:10:26</b> 12:25	<b>3</b>	18:13 24:16,18	<b>agreement</b> 9:18,19
<b>01:00:52</b> 54:7	<b>300</b> 63:15	38:25 39:1,4,9	52:18 56:14
<b>01:02:21</b> 55:15	<b>302</b> 10:16 16:22	40:24 52:4 54:8,9,9	<b>agreements</b> 8:22,23
<b>01:04:39</b> 57:10	24:14 25:8 59:6	<b>accurate</b> 19:25 63:4	8:24,25 9:3,6 52:5,6
<b>1</b>	<b>33,150,157</b> 41:15	<b>acknowledge</b> 51:13	<b>ahead</b> 4:5 7:9 51:3
<b>1</b> 12:5	<b>330</b> 63:14	<b>act</b> 42:20 60:6	51:18
<b>10-04336</b> 1:10	<b>4</b>	<b>acted</b> 18:13	<b>al</b> 1:12
<b>101</b> 3:14	<b>408</b> 63:8	<b>action</b> 11:24 25:10	<b>albert</b> 5:9 35:21
<b>10111</b> 3:5	<b>45</b> 3:4	25:11,13 56:19	52:2
<b>10178</b> 3:15	<b>5</b>	<b>actions</b> 25:10	<b>allegation</b> 5:1 51:9
<b>10:07</b> 1:20	<b>5</b> 21:9	<b>active</b> 13:23 19:20	<b>alleged</b> 11:21 18:6
<b>10:42:57</b> 32:13	<b>50</b> 20:19 55:6	21:2 23:21	26:22
<b>10:55:46</b> 43:20	<b>5th</b> 62:6	<b>actively</b> 23:6,17	<b>allegedly</b> 16:13,20
<b>10th</b> 20:3	<b>6</b>	53:8,9	<b>alleging</b> 36:23
<b>11</b> 5:13,18 6:2 21:9	<b>6</b> 1:19	<b>activities</b> 11:11,21	<b>allow</b> 32:10
<b>11501</b> 63:16	<b>7</b>	12:1	<b>allowability</b> 28:4
<b>11th</b> 31:11	<b>7</b> 63:18	<b>activity</b> 12:10,13	<b>allowance</b> 27:2 28:1
<b>12.9</b> 14:25	<b>750,000</b> 34:5	14:13 18:2,12 25:16	30:3
<b>12th</b> 20:9	<b>a</b>	25:16 53:14 54:3	<b>allowing</b> 43:21,21
<b>13</b> 19:22	<b>aaert</b> 63:8	<b>actual</b> 55:10	52:4
<b>18</b> 18:8 31:4	<b>able</b> 38:10	<b>acutely</b> 18:12	<b>amended</b> 10:15
<b>19</b> 2:2	<b>absent</b> 16:20	<b>add</b> 60:17	12:5 35:20 36:19
<b>1970</b> 36:6	<b>absolute</b> 12:18	<b>additional</b> 60:17	<b>america</b> 32:12
<b>1970s</b> 35:21 38:1	<b>absolutely</b> 15:16,18	<b>address</b> 8:20 9:4	<b>amount</b> 34:7 38:19
<b>1988</b> 38:8 39:6,10	<b>accept</b> 42:24	10:12 16:10	43:24,25 46:2
<b>1995</b> 5:12 6:2,8 16:6	<b>acceptance</b> 17:12	<b>addressed</b> 41:2	<b>analogous</b> 42:15
36:7 39:2,17 40:9	<b>account</b> 7:11 9:12	<b>adequate</b> 32:19	<b>analogy</b> 15:20
40:24 41:14 44:9	9:17,25 12:14 13:5	<b>adjectives</b> 18:19	<b>analysis</b> 43:4
52:2	13:17,22 14:2,3,4	60:13	<b>answer</b> 9:10 28:24
<b>1999</b> 20:2,3,10	14:14,18,19,25 15:1	<b>adjudicated</b> 48:19	30:18 58:2
<b>1st</b> 41:14	15:7,10,17,24 17:24	<b>admit</b> 60:16	<b>antecedent</b> 57:1,10
<b>2</b>	17:25 18:1 21:1,3	<b>adopt</b> 60:10	<b>anticipated</b> 20:7
<b>2</b> 16:22	24:9 25:4 35:14,21	<b>adv</b> 1:10	<b>anybody's</b> 7:14
<b>20</b> 23:11 41:4 46:5	36:13 37:9,16 38:4	<b>advantage</b> 54:11	<b>apfelbaum</b> 2:3,3
<b>2003</b> 14:22	38:5,7,11,23 39:2	<b>adverbs</b> 18:18	3:13 4:2,18,18 5:10
<b>2006</b> 6:3	39:10,12,23,25 40:7	60:13	5:16,23 6:11 12:3
<b>2008</b> 16:12 31:11	40:8,12 41:12,16	<b>adversary</b> 2:4 4:12	14:2 20:4,10,17
<b>2012</b> 18:8,9 19:23	42:10 43:3,8 52:5,6	8:24 12:6	23:15,17 24:5,7
23:3,4 34:4	52:19 53:1,4,5,8,19	<b>advised</b> 28:16	27:11 28:14 36:7
<b>2014</b> 1:19 63:18	53:21 54:4 55:6	<b>advisor</b> 23:12,18	40:12,12 42:2 45:4
	56:6,24 57:8	<b>affect</b> 42:21 43:4	<b>apfelbaum's</b> 11:25
		<b>affidavit</b> 31:19	18:24 21:12,12
		50:12	23:12 54:3

[apparently - case]

Page 2

<p><b>apparently</b> 53:5  <b>appeals</b> 13:12  <b>appear</b> 53:6  <b>appearance</b> 34:4  <b>applicable</b> 59:11  <b>application</b> 32:22  32:25 34:7 50:5  58:3,11  <b>applications</b> 34:5  34:18 46:1  <b>applied</b> 48:6  <b>applies</b> 10:25  <b>apply</b> 10:24 11:14  49:7 50:1  <b>appointing</b> 9:2  <b>appreciate</b> 47:8  61:14  <b>appropriate</b> 33:14  33:17,18 47:5  <b>argue</b> 34:24  <b>argued</b> 34:24 44:13  <b>arguing</b> 28:3  <b>argument</b> 6:24  14:16 23:23 26:16  29:18,20,21 35:17  41:21 44:7 47:8  54:15 56:11,25 57:1  57:2,11 58:6  <b>arises</b> 11:25 12:6  24:18 25:5  <b>arising</b> 15:9 59:6  <b>arm</b> 11:19 59:15,17  <b>arose</b> 12:2  <b>art</b> 46:7  <b>asia</b> 9:18  <b>aside</b> 5:5 8:20  <b>asked</b> 19:8  <b>asking</b> 7:24 22:3  28:8,23  <b>assert</b> 31:23,23 32:4  32:5  <b>asserted</b> 16:17  <b>assertion</b> 41:24  <b>assets</b> 47:23 48:3  49:4,5  <b>associates</b> 24:20  32:22</p>	<p><b>assume</b> 14:8 49:18  <b>assumed</b> 40:8  <b>attempts</b> 5:8  <b>attention</b> 8:18  14:20 17:3 18:14  <b>attest</b> 54:19  <b>attorney</b> 3:13 30:11  45:12  <b>attorneys</b> 3:3  <b>attributable</b> 35:17  <b>august</b> 1:19 61:14  63:18  <b>authorities</b> 20:6  <b>authority</b> 60:18  61:8  <b>automatically</b> 17:18  <b>availability</b> 41:21  <b>avails</b> 11:11  <b>avenue</b> 3:14 44:21  <b>avenues</b> 49:17  <b>avoid</b> 47:10 48:7  60:8,13,13,13  <b>avoidance</b> 56:19  <b>aware</b> 18:12 53:18  <b>awful</b> 49:16</p>	<p>43:1,19 50:9 52:16  54:21 56:3  <b>basic</b> 55:23  <b>basically</b> 18:20  40:10 42:2 47:23,25  <b>basis</b> 16:21 55:25  <b>bayer</b> 25:6  <b>began</b> 38:23  <b>behalf</b> 52:14  <b>believe</b> 15:22 20:24  24:14 27:3 51:12  53:22 54:16 56:24  57:12 60:5  <b>bells</b> 30:2  <b>belongs</b> 56:20  <b>benefit</b> 13:17,18  53:9  <b>benefits</b> 12:25  <b>bernard</b> 1:7  <b>bernie</b> 23:13 52:3  <b>bernstein</b> 1:24  <b>beyond</b> 35:15 37:18  <b>big</b> 19:23 20:13  23:22 27:18 30:14  48:5  <b>bigger</b> 9:21 47:19  <b>bik</b> 3:8  <b>bill</b> 20:12,18 22:21  <b>bills</b> 5:24 22:16  24:11 52:16 55:3,3  55:4,7  <b>bit</b> 51:4  <b>blm</b> 5:14  <b>blmis</b> 5:5,15 6:5,12  8:8,12,24 12:20  24:16 25:4 36:24  40:4 42:5,9,25  43:12 57:5,7  <b>blocking</b> 44:25 45:1  54:21  <b>bonding</b> 14:24 15:2  17:10  <b>bonds</b> 14:24 42:6  <b>bookkeeping</b> 39:24  42:17  <b>books</b> 40:4</p>	<p><b>bowling</b> 1:16  <b>bozell</b> 11:22  <b>brains</b> 61:23  <b>brief</b> 23:11  <b>briefed</b> 44:25  <b>briefing</b> 18:8 19:23  23:10  <b>briefs</b> 12:9 13:13  18:9  <b>bring</b> 60:8  <b>bringing</b> 21:21  <b>brings</b> 38:1  <b>broker</b> 52:17  <b>brokerage</b> 52:19  53:7,19,20  <b>business</b> 24:25  48:18 53:15  <b>buy</b> 22:18</p>
			<p><b>c</b></p>
	<p><b>b</b></p>		<p><b>c</b> 3:1 4:1 63:1,1  <b>calculated</b> 37:3  40:22  <b>calculations</b> 36:11  36:12 43:1  <b>calendar</b> 61:20  <b>california</b> 13:5  <b>call</b> 8:18 14:20 17:3  <b>called</b> 6:22  <b>calling</b> 8:20  <b>calls</b> 21:10,10 25:2  46:24  <b>carati</b> 16:11,18  <b>care</b> 46:6  <b>careful</b> 29:11  <b>carefully</b> 60:4  <b>case</b> 1:10 6:25,25  10:9,16 11:22 12:8  12:12,18,18,19 13:2  13:8,8,11,12 14:22  14:22,24 16:10,11  16:11,17 17:1,2,4,4  17:6,10 18:16 19:5  20:10 24:18,19,19  24:20,21,21 25:5,7  25:14,19,25 28:5  29:18,24,24,25 30:4  30:25 33:8,19 35:6</p>

<p>35:7,8,9,12 36:23 40:2 44:13,23 45:1 45:11,13,14 46:1,21 47:20,21,24 50:11 50:17 51:7,10 52:23 52:25 53:2,3,3,4,12 53:14,18 54:23 55:3 56:13,15 57:13 58:17 59:5,8 61:13 <b>cases</b> 4:16 7:10 9:16 9:24,24 10:11 11:19 12:11,17 14:7,16,20 17:5,6,23 18:1 25:3 27:13,15 29:15 34:8 44:6,8 45:3 47:25 57:22 58:10 59:7 <b>cash</b> 36:12,13 37:8 37:8,18,20,21 <b>causation</b> 13:20 <b>cause</b> 25:9,10,13 <b>cc</b> 2:2 <b>cedarbaum</b> 14:23 15:4 <b>center</b> 14:22 <b>certain</b> 52:9 <b>certainly</b> 33:17 34:9 47:4 50:20 <b>certified</b> 63:8 <b>certify</b> 63:3 <b>cet</b> 63:8 <b>chance</b> 26:5 31:17 39:25 42:16 60:15 <b>chances</b> 38:9 <b>changes</b> 15:12 38:10 39:12 <b>characterization</b> 54:5,12,13 <b>characterizes</b> 54:3 <b>charging</b> 46:2 <b>chase</b> 13:2 <b>checks</b> 17:19 <b>chemma</b> 3:8 <b>choice</b> 9:1 10:7,8 12:20,23 13:9 34:16 34:25 52:7 56:21,23 <b>choices</b> 41:10</p>	<p><b>choose</b> 5:17 <b>circuit</b> 12:22 35:18 37:4,6,13 <b>circuits</b> 37:13,13 <b>citation</b> 60:14,18 <b>citations</b> 22:10,10 61:7 <b>cite</b> 11:19,22 14:13 20:14 <b>cited</b> 12:8,12 13:3,8 13:12,12 14:21 19:17,21 20:24 21:4 24:19,21 25:7 27:13 27:15 29:24 53:3 <b>cites</b> 17:5 18:23 <b>citizens</b> 4:24 48:15 <b>claim</b> 7:1,3 10:22 10:23,23 24:17 27:16,19,20,23 28:2 28:5,10 29:13 30:1 59:21 <b>claims</b> 11:20 16:12 16:15 27:1,2 30:5 31:10,13 <b>clarkdale</b> 61:23 62:1,4,13 <b>classic</b> 9:17 <b>clause</b> 9:1,1 10:8,8 12:20,23 13:9 17:7 <b>clear</b> 4:20 5:7 27:19 30:24 31:5 32:8 54:17,24 55:3,22 <b>clearly</b> 8:17 30:9 33:4 <b>client</b> 16:17 23:21 27:1 28:2 35:4 39:1 39:15 44:3 45:2 48:12,21 52:8 <b>client's</b> 19:20 25:17 28:2 39:2 <b>clients</b> 4:17 5:1,8 11:5,7 12:9 14:9 15:21 16:2 17:16 18:11 21:21 29:9 32:4 36:24 39:17 40:19 41:10 46:22 47:22 52:14 58:24</p>	<p>60:8 <b>closely</b> 23:23 28:15 <b>cole</b> 3:9 50:25 51:2 51:2,4,17,19,24 55:8,11,14 56:2,8 57:12,17,22 60:5 61:10,12,15 <b>comad</b> 13:7 <b>come</b> 7:19 8:7 10:13 16:2 36:8,14 45:19 46:4,12 47:9 48:14 52:3,6 <b>comes</b> 11:10 59:23 <b>comfort</b> 50:21 <b>comfortable</b> 45:20 <b>coming</b> 9:9 13:22 22:21 30:17 48:17 <b>commission</b> 52:15 <b>communicated</b> 54:6 <b>company</b> 14:24 15:2 17:10 24:23,25 25:1 <b>compare</b> 19:17 <b>complaint</b> 8:1 10:15 12:5 35:20 36:16,19 <b>complete</b> 32:11 <b>complied</b> 54:10 <b>comply</b> 23:14 <b>component</b> 36:4 37:16 43:11 <b>computation</b> 42:22 <b>computed</b> 38:21 <b>concession</b> 33:7,9 33:13 56:17 <b>concluded</b> 62:18 <b>conclusion</b> 56:7,8,9 <b>conclusions</b> 56:10 <b>conclusory</b> 18:14 18:19 60:14 <b>concrete</b> 35:5 <b>condition</b> 32:3 50:16 <b>conditions</b> 32:3 52:11 <b>confer</b> 15:8 <b>conference</b> 62:14</p>	<p><b>conglomeration</b> 38:25 <b>congratulations</b> 61:25 <b>connecticut</b> 12:19 <b>connection</b> 17:8 25:9 33:1 38:11 <b>connections</b> 5:2 12:14 17:11 <b>conscience</b> 49:25 <b>conscious</b> 29:22 42:18 44:3 <b>consciously</b> 30:15 <b>consequence</b> 11:12 <b>consequences</b> 29:5 54:11,14 59:11 <b>consider</b> 28:8 29:3 30:7 <b>consideration</b> 49:21 <b>considered</b> 28:6,15 <b>considers</b> 60:12 <b>consulted</b> 30:10 <b>contact</b> 20:22 <b>contacts</b> 7:22 11:5,7 13:4 51:15,19 <b>contain</b> 8:25 9:1,22 <b>contemplates</b> 52:18 <b>contentions</b> 15:6 <b>contested</b> 54:18 <b>context</b> 8:20 20:15 22:13,19 24:1 <b>continue</b> 15:13 16:9 32:14 35:3 44:4 <b>contract</b> 6:21,25,25 8:19 9:8 12:20,23 24:24 <b>contracts</b> 23:15 48:22 <b>contrary</b> 15:6 30:11 48:18 49:20 <b>convenience</b> 4:14 56:11 58:7 <b>conveniens</b> 26:11 26:20 30:20 31:6,8 32:2,14 34:11,16 41:21 45:16</p>
--	---	--	--

[convenient - determined]

Page 4

<p><b>convenient</b> 58:20  <b>conversing</b> 45:20  <b>conveyance</b> 44:10  <b>cooperman</b> 3:17 4:6  4:9,11,22 5:5 6:2,6  6:17 7:4,10,15,18  7:21 8:2,4,9,14,16  9:13 10:2,6,10,20  11:2,16,18 12:4  13:24 14:12 15:12  15:16,18 16:8,25  17:21 18:22 19:1,7  19:9,11,15 20:23  21:8,14,18,25 22:4  22:7 23:1 25:15,23  26:1,3,9,17,19,22  27:3,7,10,18 28:6,9  28:12 29:19 30:21  31:1,4,12,15,25  32:8,17 33:9,20,24  34:13,15 35:10,13  35:19 36:3,15,20  37:5,10,15,20,25  38:3,12,15,18,24  39:4,14,21 40:5,20  40:22 41:8,13,18,25  42:12,14,23 43:5,9  44:1,11,14,18 45:11  45:24 46:13,19  47:13 48:4 49:2,9  49:14 50:20,24 51:5  52:25 54:1 56:25  57:19,20,25 58:5,15  58:18,22,25 59:2,13  59:16,18,25 60:15  60:19,25 61:3,19,22  62:2,5,8,11,17  <b>corp</b> 13:7  <b>correct</b> 8:14,16  18:22 41:17 58:22  58:25  <b>correspondence</b>  15:22 53:4  <b>correspondent</b> 53:5  <b>corresponding</b>  13:13</p>	<p><b>cost</b> 47:8  <b>costs</b> 47:10  <b>counsel</b> 27:11 28:22  33:1,15,19,22 34:2  34:12,19,20,22 48:6  48:9 49:3 50:2,2,6  56:16 58:10,11,14  <b>country</b> 63:14  <b>couple</b> 8:19 12:16  17:15 33:25  <b>course</b> 25:23 32:4  38:6 47:4,22  <b>court</b> 1:1,15 4:2,5,8  4:10,21 5:3 6:1,4,15  6:24 7:9,13,16,19  7:24 8:3,5,11,15,25  9:8,23 10:4,7,18,21  11:9,17 12:2,21  13:12,18 14:5 15:2  15:11,14,17 16:1,23  17:4,5,9,14 18:14  18:23 19:3,8,10,13  20:21 21:6,9,16,19  22:2,6,23 25:13,22  25:24 26:2,5,15,18  26:21,25 27:5,9,17  27:21,24,25 28:3,8  28:10,11 29:5,16,23  30:19,23 31:2,7,13  31:24 32:7,16,23  33:7,17,22 34:10,14  34:18 35:7,11,15,23  36:10,17,21 37:8,12  37:18,23 38:2,7,14  38:17,19 39:3,7,18  40:3,18,21 41:7,11  41:14,20 42:11,13  42:21,24 43:6,23  44:5,13,16 45:8,22  46:8,18 47:7 48:2,8  48:12,14,14,25 49:7  49:7,11,12 50:1,14  50:23 51:1,3,15,18  51:23 53:22 55:5,5  55:9,13,19 56:7  57:11,16,18,24 58:4  58:13,16,19,23 59:1</p>	<p>59:9,14,17,24 60:7  60:20 61:2,5,11,13  61:17,21,25 62:3,7  62:9,12,14  <b>court's</b> 16:21  <b>courts</b> 46:24  <b>cover</b> 26:12,20  <b>cplr</b> 10:16,24 11:9  11:13 25:8 52:23  53:14 59:5,10,11  <b>creditor</b> 16:16  27:23  <b>cremona</b> 3:7  <b>cross</b> 6:23  <b>crucial</b> 14:16 51:12  <b>curious</b> 23:8  <b>current</b> 58:6  <b>currently</b> 51:7  <b>customs</b> 24:20  <b>d</b>  <b>d</b> 4:1 63:8  <b>date</b> 36:2 38:21  39:12 63:18  <b>daughter</b> 5:12 46:6  <b>david</b> 3:10  <b>dawn</b> 2:25 63:3,8  <b>day</b> 20:19 28:14  39:15 46:15  <b>days</b> 24:4  <b>deal</b> 18:2 20:13  44:17 48:9 60:24  <b>dealer</b> 52:17  <b>dealing</b> 53:7,7  <b>dealt</b> 15:21  <b>debt</b> 57:1  <b>debtor</b> 16:16  <b>debts</b> 57:10  <b>deceased</b> 5:9  <b>december</b> 31:11  <b>decide</b> 21:17 26:6  <b>decided</b> 14:23  <b>decision</b> 29:22 30:5  42:18 49:25 57:1,10  <b>decisions</b> 44:3  <b>declaration</b> 48:16  50:12</p>	<p><b>declined</b> 24:22  <b>deem</b> 62:9  <b>defendant</b> 14:6 15:9  16:14 25:9 31:23  57:2  <b>defendant's</b> 33:22  <b>defendants</b> 1:13 2:2  4:12 9:17 21:13  27:5 33:3,5,12,14  34:21 48:9 50:7,16  51:16 56:18  <b>defense</b> 31:22 32:6  32:12 44:22 50:17  <b>defenses</b> 35:11  <b>deference</b> 34:17  35:1  <b>definitely</b> 56:5  <b>defrauded</b> 40:19  <b>deliberately</b> 18:13  <b>demonstrated</b>  19:24  <b>denial</b> 27:6  <b>denied</b> 27:3  <b>deny</b> 60:17,18  <b>depasquale</b> 20:5,12  22:21  <b>depend</b> 26:7 40:4  <b>depends</b> 35:13  37:20,21  <b>deposed</b> 45:9,12  <b>deposit</b> 13:22  <b>deposited</b> 17:10  <b>deposition</b> 18:24  21:12 45:23 46:9,10  <b>depositions</b> 24:4  46:24 47:11  <b>deposits</b> 8:5 16:4  <b>derived</b> 21:11  <b>deserve</b> 46:23  <b>designated</b> 13:9  <b>designation</b> 13:3  <b>despite</b> 45:5  <b>detail</b> 43:10  <b>detailed</b> 22:24  <b>determine</b> 28:4  <b>determined</b> 6:4</p>
--	---	--	--

[determining - feeder]

Page 5

<b>determining</b> 35:24 <b>dictated</b> 23:18 <b>died</b> 5:12 52:2 <b>difference</b> 9:15 11:3 17:22 24:15 27:17 27:18 28:12,13 30:14 40:23 49:5 59:15 <b>differences</b> 9:14 <b>different</b> 5:11 7:24 8:23 11:1 14:19 15:20 17:2 22:18 25:20 27:16 36:8,12 36:14 38:4 39:16,24 40:8,16 41:9 43:15 57:9 59:5,13 <b>differently</b> 10:5 46:14 57:9 59:22 <b>directed</b> 23:6 51:21 <b>directing</b> 23:18 52:20 54:8 <b>disagree</b> 48:25 56:9 <b>disagrees</b> 43:7 <b>discovery</b> 14:1 18:9 18:21 19:25 21:11 23:9,11 31:5 44:19 56:3 <b>discretion</b> 58:8 <b>discretionary</b> 58:7 <b>discussing</b> 51:5 52:25 <b>discussions</b> 24:6 <b>dismiss</b> 2:4 4:13 <b>dismissal</b> 32:2 <b>dispute</b> 18:18,25 19:2,5,11 21:13,24 27:2 51:13 52:24 53:23 54:16 55:17 55:23 56:10 60:3 <b>disputed</b> 28:11 54:5 <b>disputes</b> 43:7 60:22 <b>distinction</b> 17:22 59:14,18 <b>distinguished</b> 17:4 <b>district</b> 1:2 14:23 29:25	<b>dividends</b> 24:9 <b>divinsky</b> 16:10 53:12 59:5 <b>divorce</b> 57:3,6 <b>docket</b> 27:21 <b>document</b> 9:22 37:25 38:24 <b>documents</b> 19:22 20:3 54:2 <b>doing</b> 22:19 23:13 23:20 34:3,6 43:20 <b>dollar</b> 14:1 <b>dollars</b> 13:14 34:6 43:13,14,15,16 <b>domiciliary</b> 15:9 <b>doris</b> 1:12 2:2 14:2 <b>dovinsky</b> 24:19 25:19 <b>dozens</b> 13:15 <b>dr</b> 21:12 <b>dragging</b> 21:20,21 <b>drye</b> 3:12 4:11 <b>due</b> 17:21 22:21 29:17	<b>english</b> 29:10 45:19 <b>entered</b> 57:3 <b>entering</b> 12:22 <b>entire</b> 11:7 <b>entry</b> 42:17 <b>envision</b> 41:8 <b>equally</b> 58:20 <b>equation</b> 36:9 <b>equitable</b> 30:4,5 <b>equities</b> 24:9,11 48:10 <b>equivalent</b> 5:20 <b>erroneous</b> 38:3 <b>especially</b> 18:7,9 <b>esq</b> 3:7,8,9,10,17 <b>essence</b> 34:19 <b>essentially</b> 20:5 39:13 <b>establish</b> 20:25 <b>establishes</b> 52:22 <b>estate</b> 1:11 2:2 49:4 <b>et</b> 1:12 <b>europe</b> 9:18 <b>event</b> 59:21,21 <b>everybody</b> 40:19 <b>evidence</b> 5:22 16:20 19:17,18 22:9 23:24 24:1 36:12 41:23,25 51:10 55:1 60:4,14 <b>evidentiary</b> 21:17 21:22,23 41:5 53:24 60:21 <b>exact</b> 33:5 48:7,7 <b>exactly</b> 16:25 24:7 50:3 <b>examine</b> 19:16 23:23 <b>example</b> 19:19 22:14 23:1 36:24 39:6 42:4 47:18 53:25 <b>examples</b> 12:17 <b>exchange</b> 24:10 <b>executed</b> 52:5,7 <b>exercise</b> 16:21 <b>exhibit</b> 7:25,25	<b>experience</b> 30:8 <b>expert</b> 28:19 31:9 31:20,21 49:9,10,18 <b>expertise</b> 24:6 <b>explain</b> 29:6 33:20 40:6 60:17 <b>explained</b> 23:10 <b>express</b> 13:16 <b>extent</b> 34:24 60:3
	<b>e</b>		<b>f</b>
	<b>e</b> 1:23,23 3:1,1 4:1,1 22:23 63:1 <b>easier</b> 49:15 <b>effect</b> 59:19 <b>either</b> 12:9,12 24:11 24:17 34:8 60:16 <b>elderly</b> 46:5 <b>electronic</b> 63:8 <b>eloquent</b> 29:19 <b>emilie</b> 2:3 4:18 5:13 5:13,18,23 6:11 14:2 23:15 36:7 40:11 42:1,18 <b>emilie's</b> 22:25 41:11 55:6 <b>eminent</b> 33:15,18 33:22 48:9 50:1,2 <b>enforce</b> 49:22 <b>engage</b> 32:25 <b>engaged</b> 23:21 <b>england</b> 49:20		<b>f</b> 1:23 63:1 <b>f9</b> 27:22 <b>fact</b> 7:6 11:18 19:4 20:22 22:11 24:3,6 29:1,13,25 32:11 40:2,9 45:6 47:14 48:17 49:3,16 53:11 54:13 60:16,23 61:14 <b>factor</b> 10:10 12:24 <b>factors</b> 35:3 48:11 <b>facts</b> 4:16 7:7 10:13 18:17,18,20,25 21:10,13 25:24 30:4 30:8 40:1 51:12 53:23 54:15 55:23 56:5,9 60:3,8,12,17 61:8 62:15 <b>factual</b> 19:5 22:10 22:10 <b>fair</b> 47:2,5 48:11,21 48:23 60:25 <b>fairly</b> 19:16 <b>faith</b> 51:9 <b>family</b> 5:21 <b>father</b> 5:10 <b>favor</b> 34:1 35:4 <b>fax</b> 20:3,9,10 22:23 23:3,5,9 <b>faxes</b> 20:2 21:5 55:24 <b>federal</b> 10:25 11:6,9 11:15,21 13:4 24:15 <b>fee</b> 34:5,7 45:25 58:3 <b>feeder</b> 12:19

[female - hear]

Page 6

<b>female</b> 4:19 <b>fictitious</b> 35:8,11 39:16 51:9 <b>figure</b> 23:13 56:6 <b>figured</b> 4:21 <b>filed</b> 18:21 27:12 <b>filing</b> 26:23 27:14 27:23 36:2 38:21 39:12 <b>filings</b> 26:13 <b>finances</b> 24:6 <b>financial</b> 22:17 54:20 <b>find</b> 23:25 24:22 <b>fine</b> 60:22 62:7 <b>finest</b> 34:12 <b>firm</b> 4:11 32:22,24 <b>firmly</b> 52:22 <b>first</b> 4:23 14:21 20:3 21:23 31:8 34:1 35:5 37:17 39:1,9 <b>five</b> 6:15,18 23:16 30:22 31:9,10 <b>flipping</b> 37:25 39:5 <b>floor</b> 26:18 <b>florida</b> 14:22,24 16:14 17:9,13 <b>focus</b> 6:7 14:15 18:4 25:8 <b>focused</b> 25:19 <b>focusing</b> 7:4 <b>following</b> 27:22 <b>forcing</b> 48:13 <b>foregoing</b> 63:4 <b>foreign</b> 17:7 48:3 56:17,19 <b>foreseeable</b> 59:10 <b>form</b> 4:14 27:14,20 27:22,22 29:2,3,13 30:1 <b>forms</b> 26:23 27:12 29:7 <b>formula</b> 37:6 <b>forth</b> 18:13 <b>fortune</b> 30:10	<b>forum</b> 26:11,20 30:20 31:6,8 32:2 32:14,19 34:10,15 34:16,25 41:20 45:16 49:12,13 56:11,21,23 58:7 <b>found</b> 12:12 15:2 <b>four</b> 19:22 21:5 39:9 42:6,7 <b>fraction</b> 46:2 <b>france</b> 4:25 6:20,20 7:23 9:6 28:20 31:14,22 32:1,5,19 33:3,5,8,14 34:1,21 36:22 40:1 41:23 42:1,16 45:7,9,10 47:21 48:1,17,19,21 49:17,20 50:8 51:23 51:24 54:14 56:14 57:23 <b>frank</b> 22:20 <b>frankie</b> 20:4 <b>frankly</b> 28:18 48:9 48:23 <b>fraud</b> 25:5,11 31:10 <b>fraudulent</b> 6:25 9:11 16:15 25:14,18 44:9 49:8 51:6,8 56:12 <b>free</b> 5:17 <b>french</b> 4:17,24 5:19 5:20,22,24 6:10,22 8:19,21,22 9:7,12 9:22 14:3,10 15:21 20:5,12,17 22:16 23:15 24:1 28:18,22 30:8 31:20,21 32:22 32:24 33:2,15 34:12 34:20,22 40:9,11 42:5,6 43:19,19,23 44:2,23,25 45:1,18 45:18 48:6,9,12,14 48:15,16,18,22 49:7 49:9,18,20 50:5,6,7 50:22 54:21 55:2,5 55:7 56:15,16 58:9 58:9,11,14	<b>fro</b> 42:19 <b>front</b> 6:21 39:5 <b>fund</b> 12:18,19 <b>funded</b> 57:7 <b>funds</b> 16:20 52:12 53:13 <b>further</b> 57:14 60:21 62:14 <b>future</b> 19:24  <b>g</b> <b>g</b> 4:1 5:9 <b>gallery</b> 46:7 <b>garling</b> 2:25 63:3 <b>gather</b> 49:4 <b>gathered</b> 49:6 <b>general</b> 11:15 59:17 59:20 <b>generale</b> 14:21 15:1 16:9 53:3 <b>generale's</b> 15:6 <b>generally</b> 11:13 <b>generated</b> 17:18 <b>germany</b> 49:21 <b>getting</b> 13:14 41:22 61:24 <b>give</b> 6:13 15:20 21:14 26:5 35:4 45:19 46:4 47:13,14 47:14 52:12 57:18 60:15 <b>given</b> 28:17,21 34:17,25 35:13,15 36:4,5 39:8 48:8 <b>gives</b> 27:15 <b>glib</b> 40:18 <b>go</b> 4:5 7:6,7,9 10:2 16:5 26:11,20 34:11 35:6 38:17,22 44:21 47:21 51:3,18,22 56:17 <b>goes</b> 26:10 35:21 38:8 39:10 44:2 <b>going</b> 7:22 10:23 13:21 26:5,9 28:16 29:4 34:20,21,24 38:10 40:25 41:23 42:19 44:7,24 47:19	47:20 48:8,14,18 50:1,5,6 56:13 57:21 60:10,11,17 61:5,13 <b>good</b> 26:4,23 32:17 50:25 51:1 <b>gotta</b> 29:11 <b>gotten</b> 36:15 43:9 44:19 <b>governed</b> 9:12 <b>granddaughter</b> 5:13 <b>grant</b> 50:16 <b>great</b> 34:19,20,22 48:15 <b>greater</b> 18:2 <b>green</b> 1:16 <b>group</b> 13:17,19 <b>guarantee</b> 45:25 <b>guaranteed</b> 15:3 <b>guarantees</b> 6:13 <b>guardianship</b> 5:20 5:23 6:11 42:5 <b>guess</b> 6:23 14:8 17:14 18:21 21:11 27:2 28:24 39:18 44:14 55:21 58:19 <b>guru</b> 22:17 <b>générale</b> 17:2,4,6 24:21  <b>h</b> <b>h</b> 1:6 <b>half</b> 5:24 55:14 <b>hand</b> 17:23 <b>handwritten</b> 20:2 <b>happened</b> 6:8,13 8:17 27:1,10 36:18 40:1 42:11,13,14,17 44:16,17,17 <b>happening</b> 53:16 <b>happy</b> 61:22 <b>hardship</b> 45:17,17 47:20 <b>haunt</b> 46:22 <b>health</b> 14:22 <b>hear</b> 28:11 36:21 39:7
---	--	--	---

[hearing - know]

Page 7

<p><b>hearing</b> 2:2 21:17 21:22 53:24 60:21 <b>heat</b> 18:16 <b>heavily</b> 34:1 <b>held</b> 9:3 20:18 <b>helpful</b> 61:16 <b>hezzbollah</b> 13:17,18 <b>high</b> 20:18 <b>hinti</b> 57:2 <b>hire</b> 29:3 32:23 34:12 48:8 <b>hired</b> 58:10,14 <b>hiring</b> 32:23 56:16 <b>hold</b> 7:11 11:20 23:14 <b>hon</b> 1:24 <b>honeymoon</b> 62:6 <b>honor</b> 4:9,15,16,19 4:22 5:6,11,16,18 5:22 6:3,6,10,14,17 6:20,21 7:5,8,15,18 7:21 8:4,14 9:5,13 10:3,12 11:2,16,23 12:5,8,12,17 13:2 13:24 14:12,15 15:4 15:13,18 16:8,10,25 17:21 18:3,7,22 19:2,7,15,19,20,22 20:1,9,16,23 21:4,8 21:14,25 22:4,11,14 23:2,8,23,24 24:4 25:3 26:1,9,14,17 26:24 27:10,18 28:13,18,23 29:1,7 29:20 30:7,15 31:6 31:15,18 32:1,10,15 32:18,20 33:4,10,16 33:24 34:13,23 35:2 35:5,10 36:5,16 37:6,11 38:1,5 39:21 40:1,5,20 41:1,13 42:4,19 43:10,12 44:1,12,22 45:3,4,12,14,15,16 45:25 46:13 47:3,14 47:15,18,19,25 48:4 48:10 49:10,14 50:3</p>	<p>50:9,21,24,25 51:6 56:12 57:21,21 58:25 59:4 60:1,1 61:1,22 62:6,11,13 62:17 <b>honor's</b> 14:20 17:3 30:17 <b>hope</b> 45:17 <b>hospital</b> 14:25 <b>hostetler</b> 3:2 <b>huge</b> 19:1 46:2 <b>hundred</b> 43:13,15 43:16 <b>hundreds</b> 16:4 <b>hung</b> 17:14 <b>husband</b> 46:5 <b>hypothetically</b> 42:4 42:8 43:12</p>	<p><b>inherited</b> 5:14,14 36:7 39:17 40:16 42:18 <b>initial</b> 32:16 <b>inside</b> 11:12 <b>insufficient</b> 15:8 <b>insurances</b> 52:11 <b>intend</b> 54:22 56:17 56:20 <b>intent</b> 16:21,23 <b>inter</b> 56:24 57:8 <b>interaccount</b> 39:19 39:22,23 <b>interest</b> 15:3 17:12 17:17 48:11,15 <b>interesting</b> 24:3 <b>interests</b> 49:4 <b>international</b> 24:20 <b>interpreter</b> 45:23 <b>invest</b> 5:17,17,23 44:4 52:12,14 53:8 <b>invested</b> 51:25 55:6 <b>investing</b> 21:3 30:9 53:19 <b>investment</b> 1:8 5:25 35:24 37:23 43:2 52:19 53:10,10,11 <b>investments</b> 52:9,20 55:10 <b>investor</b> 29:8 43:13 56:5 <b>investors</b> 18:11 55:22 <b>invoke</b> 12:25 <b>involved</b> 24:25 28:22 <b>involvement</b> 60:6 <b>irrelevant</b> 39:13 <b>irving</b> 1:6 <b>issue</b> 6:9 7:2 9:16 19:4 21:17 26:7 28:6 39:1,19 60:24 <b>issues</b> 24:17 48:18 60:22 <b>issuing</b> 14:24 <b>it'll</b> 62:3</p>	<p><b>j</b> <b>j</b> 2:25 3:7 63:3 <b>jersey</b> 29:25 <b>jonathan</b> 3:17 4:11 <b>judge</b> 1:25 5:20,21 5:23 6:11 14:23 15:4 16:11,18 24:20 24:22 25:6,19 34:4 40:11 42:5,20 43:21 58:8 <b>judgment</b> 48:13 49:22 60:9 <b>jurisdiction</b> 4:14 5:7 6:9,19 7:5,8,11 7:12 9:16,20 10:9 10:16,25 11:6,10,14 11:15,20 12:11,24 15:8 16:22 19:6 20:25 24:14,15,23 26:7,24 27:15,24 28:4 29:4,14,21,23 30:3,16 41:3 44:20 52:22 53:6,22 54:24 56:18,19 59:15,17 59:20 61:9 <b>jurisdictional</b> 7:2 14:1 18:8,21 23:9 25:24 26:16 31:5 60:12</p>
	<p><b>i</b> <b>identified</b> 11:4 <b>igion</b> 1:12 <b>ignorant</b> 29:17 <b>igoin</b> 2:3 3:13 5:9 5:11 14:2 35:21 52:2 <b>imagine</b> 41:3 <b>implicated</b> 25:25 33:3 43:19 50:7 <b>important</b> 5:6 6:19 10:10,14 18:4 43:18 50:4 52:5 <b>imposition</b> 46:3 <b>improper</b> 56:22 <b>impropriety</b> 56:22 <b>inadequate</b> 16:21 <b>include</b> 51:19 <b>income</b> 14:18 53:2 <b>incorrect</b> 54:2 <b>indicated</b> 12:22 <b>indiscernible</b> 12:24 32:12 43:20 54:6 55:15 57:10 <b>information</b> 39:9 <b>informed</b> 20:17 <b>ing</b> 42:19,19 <b>inheritance</b> 5:19</p>		<p><b>k</b> <b>keep</b> 9:8 50:18 57:7 <b>kelley</b> 3:12 4:11 <b>kind</b> 56:15 <b>kingsford</b> 16:11 <b>knew</b> 36:24 <b>know</b> 6:24 14:5 22:17,22 23:20,24 24:10,10 26:10 28:19,20 29:8,20 30:23 32:18 36:21 40:6 41:4 42:14 43:12,14 46:13 49:14,17,24 51:21 55:17 57:11 58:2,11 60:24</p>

[knowing - monthly]

Page 8

<b>knowing</b> 50:21 <b>knowingly</b> 51:25 <b>knowledge</b> 16:20,23 16:23 <b>known</b> 24:7 <b>knows</b> 18:7 <b>koeltl</b> 24:22 <b>koeltl's</b> 24:20	<b>legal</b> 54:15 <b>liabilities</b> 54:18 <b>liability</b> 35:8 36:25 41:5 51:10 <b>life</b> 37:9 <b>lifland</b> 34:4 <b>limitations</b> 31:9,22 32:6 50:13,17,19 <b>limited</b> 17:11 <b>liquidation</b> 1:7 <b>listed</b> 52:13 <b>lists</b> 8:3 21:9 <b>litigate</b> 54:22 56:20 58:1,20 <b>litigated</b> 39:20 <b>litigating</b> 28:1 34:8 57:22 58:17 <b>litigation</b> 33:2 58:10 <b>little</b> 46:14 51:4 <b>live</b> 4:24 <b>livelihood</b> 46:3 47:2 <b>lives</b> 46:23 <b>llc</b> 1:8 <b>llp</b> 3:12 <b>located</b> 33:3,5 50:7 52:9 <b>logical</b> 40:13 <b>long</b> 11:19 19:13 59:12,15,17 <b>look</b> 7:25 13:20 15:14 18:9 22:7,9 22:12 23:4 33:16 46:14,14 48:10 60:4 61:19 <b>looked</b> 16:5 <b>looking</b> 13:4 30:1 59:20 <b>looks</b> 60:1 <b>lose</b> 6:15,18 23:16 47:17 <b>loser</b> 28:17 36:8 <b>losses</b> 38:21 <b>lost</b> 30:10 45:24 <b>lot</b> 4:15,23,23 8:3,5 10:10 13:21 18:16 18:24 19:14 20:7	29:1 36:18 44:8 46:16,17 49:16 52:6 53:1 60:5 <b>lump</b> 5:8	<b>measure</b> 36:5,6 37:21 <b>meetings</b> 24:23 <b>memo</b> 18:20 23:18 31:17 <b>memorandum</b> 21:6 22:9 56:1,2,3 <b>mentioned</b> 9:4 22:14 41:11 47:7 <b>merely</b> 7:10,11 20:11 <b>merits</b> 25:25 26:8 35:6,7 41:2 43:10 44:19 46:12 48:13 54:23 <b>method</b> 35:24 37:23 43:2 <b>million</b> 14:25 43:13 43:14,15,16 51:14 51:20 <b>millions</b> 13:14 <b>mind</b> 26:19 <b>mineola</b> 63:16 <b>minimize</b> 54:11 <b>minimizes</b> 45:17 <b>minimizing</b> 22:24 46:19 <b>minimum</b> 16:3 <b>minutes</b> 41:4 <b>misheard</b> 38:18 <b>misstated</b> 19:9 <b>mistake</b> 20:6 <b>money</b> 5:14,15,18 5:24 6:5,12,13 7:20 8:8,10,13,21 13:21 13:21,25 14:8 15:2 16:7 17:10 20:7 34:7 35:17,22 36:7 39:16 40:13 42:2,6 42:8 43:3,7,21,22 43:24,25 44:9 45:24 46:16,17 52:20 53:20 54:19 55:11 57:5,7 <b>monies</b> 16:13 17:25 <b>monthly</b> 17:12,17 24:8
<b>l</b>	<b>l</b>	<b>m</b>	
<b>l</b> 1:7 <b>lack</b> 4:13 <b>lacks</b> 28:4 <b>language</b> 8:19 29:10 <b>largely</b> 5:15 7:22 18:1 21:11 <b>late</b> 5:9 25:6 <b>laurence</b> 2:3 4:18 4:19 5:10,12,16 20:4,10 23:12,17 24:4 27:11 45:4 <b>law</b> 4:11 5:21 9:1,7 9:12 10:7,8,12,14 10:22,25 11:10,14 11:15 12:20,23 13:1 13:9 14:13 15:11 20:17,24 21:7 23:15 24:18 28:19,21 29:17 31:20,21 32:1 32:22,24 33:2 35:16 35:25 36:18 38:10 39:12 40:9 43:19,24 48:16,18 49:8,9,18 49:19,20 50:7,22 51:7 52:7,17,22,25 53:5,18 <b>laws</b> 14:10 16:16 <b>lawsuit</b> 55:12 <b>lawyer</b> 6:23 29:3,5 45:9 <b>leads</b> 18:3 <b>leave</b> 6:5,12 <b>lebanese</b> 13:11 <b>leechy</b> 15:11,19,22 15:23 <b>left</b> 43:3,8		<b>m</b> 1:24 3:10 <b>madoff</b> 1:7 4:2,15 6:12,20 9:16,17 12:7,18 14:4 15:21 23:13,19 25:11,16 39:24 40:10,19 44:4 48:17 52:3,9,10,12 55:8,11,14 57:6 <b>madoff's</b> 9:4 11:25 57:4 <b>magnify</b> 30:22 45:11,14 <b>mail</b> 22:23 <b>maintain</b> 15:24 52:4 <b>maintained</b> 13:6 <b>maintaining</b> 7:11 9:25 12:14 14:14 53:1 <b>maintenance</b> 15:7 21:1 <b>making</b> 41:20 54:9 <b>malachi</b> 13:11 <b>market</b> 25:7 52:13 <b>married</b> 61:24 <b>massive</b> 12:6 25:11 <b>material</b> 60:12,22 61:8 <b>math</b> 41:19 <b>matter</b> 1:4 26:12 48:19 54:15 62:9 <b>matured</b> 20:12 <b>maturity</b> 20:18,19 <b>maximize</b> 54:11 <b>maximum</b> 12:17 <b>mcmillian</b> 3:10 <b>mean</b> 28:7 40:18 58:9 <b>meaning</b> 22:5 <b>means</b> 8:12 46:3 <b>meant</b> 19:23	



[months - potentially]

Page 9

<b>months</b> 18:8 31:4 <b>morning</b> 50:25 51:1 <b>motion</b> 2:3 4:13 50:16 60:9 <b>move</b> 25:21 30:19 31:6 <b>moving</b> 29:1	45:16 56:11 58:7 <b>notaire</b> 6:22 <b>notary</b> 6:23 <b>note</b> 17:8 <b>noteworthy</b> 31:19 <b>noticed</b> 24:8 <b>number</b> 17:19 27:21 36:14 41:16 51:14 <b>numbered</b> 61:7 <b>ny</b> 3:5,15 63:16	<b>ordinary</b> 18:11 <b>origin</b> 38:22 <b>originally</b> 43:13 <b>outcome</b> 14:19 <b>outline</b> 37:7 <b>outside</b> 11:12	<b>perpetrated</b> 12:7 25:12 <b>person</b> 9:18 17:24 45:18 46:5,15,20 47:2 <b>person's</b> 47:1 <b>personal</b> 4:14 9:16 10:9 12:10,11,24 15:8 19:6 26:7 44:20 52:22 53:22 54:24 61:9 <b>persuaded</b> 57:7 <b>petrucci</b> 29:24 <b>ph</b> 11:22 13:7 15:11 16:11,11 20:5 24:19 25:7,19 57:2 61:23 <b>phone</b> 25:2 <b>picard</b> 1:6 13:2,7 <b>pieces</b> 48:16 <b>place</b> 21:23 23:14 37:17 <b>plaintiff</b> 1:9 34:18 <b>plaintiff's</b> 25:10 34:16 <b>plan</b> 22:24 <b>plaza</b> 3:4 <b>please</b> 4:8,10 10:6 10:20 23:23 32:20 60:4 <b>podium</b> 4:7 <b>point</b> 6:5 9:14,21 11:23 19:13 20:1 22:15 24:13 25:3 27:8 30:15 32:1 34:17,23 35:1 36:5 36:16 38:3 39:16 40:17,25 43:10 44:2 46:20 48:23 49:24 59:7 <b>points</b> 45:1 <b>ponzi</b> 12:6 16:24 36:24 38:23 <b>position</b> 38:13 <b>possible</b> 60:8 <b>post</b> 23:9,10 <b>potentially</b> 45:4
<b>n</b>	<b>o</b>	<b>p</b>	
<b>n</b> 3:1 4:1 5:9 63:1 <b>name</b> 4:11,19 27:20 <b>named</b> 57:2 <b>names</b> 4:18 <b>necessarily</b> 45:2 <b>necessary</b> 32:24,25 50:14 54:10 <b>need</b> 53:24 60:8,21 62:14 <b>needs</b> 20:25 <b>negotiated</b> 6:21 9:6 <b>negotiations</b> 40:10 <b>net</b> 14:7 28:16,17 35:24 36:8,8 37:1,2 37:23 38:21,21 42:22 43:1,2 <b>never</b> 11:10 15:21 24:7,12 27:5 <b>new</b> 1:2,17,17 3:5 3:15 5:3,21 7:12,22 8:12,25 9:2,3,4,11 9:20,25 10:8 11:8 12:10,13,14,20,23 13:1,3,8,9,12,14,15 13:16,16 14:14,18 14:25 15:7,20,24 16:15 17:8,10,11,24 18:3 19:21 24:16,25 25:2,9,18 29:25 30:12 33:19,23 34:19,25 47:21,24 49:2,12,13,19 51:11 51:25 52:1,4,10,19 53:4,16,20 59:21,22 <b>nicholas</b> 3:7 <b>non</b> 4:14 10:8 11:9 15:8 26:11,20 30:20 31:6,8 32:2,14 34:11,16 41:20 45:6	<b>o</b> 1:23 4:1 5:9 63:1 <b>objected</b> 27:5 <b>objecting</b> 54:4 <b>obtained</b> 16:13 <b>obvious</b> 28:24 <b>obviously</b> 29:7 58:13,13,15,16 <b>occurred</b> 41:15 <b>october</b> 20:9 34:4 <b>oh</b> 23:1 32:17 36:20 <b>okay</b> 4:22 11:17 19:3,10 23:7 26:19 26:21 27:9 30:21 31:4,25 32:7 35:19 39:2,3,21 44:14 50:23 55:13,13 57:17 59:24 61:11 62:8,9 <b>old</b> 5:13,19 6:2 63:14 <b>older</b> 46:6 <b>once</b> 46:9 <b>online</b> 25:7 <b>open</b> 36:25 50:18 <b>operations</b> 61:23 <b>opportunity</b> 32:9 50:12 <b>opposed</b> 25:16 <b>options</b> 28:18,19 <b>oral</b> 23:23 <b>order</b> 24:14 29:21 34:9 45:4 <b>ordered</b> 55:20 <b>ordinarily</b> 34:15	<b>p</b> 3:1,1 4:1 <b>page</b> 8:23 9:21 38:5 <b>pages</b> 21:9 23:11 <b>paid</b> 52:15 <b>papers</b> 7:14 19:14 22:12 30:24 34:25 <b>paragraph</b> 12:4 <b>paragraphs</b> 61:7 <b>paris</b> 4:25 6:20 <b>park</b> 3:14 <b>part</b> 13:20 14:16 16:14,15 18:4 23:3 26:2,15 32:5 <b>participants</b> 21:2 <b>participate</b> 21:21 33:15 <b>participation</b> 19:21 <b>particular</b> 9:5 <b>parties</b> 12:25 24:24 <b>parts</b> 17:3 29:1 <b>party</b> 45:6 <b>passed</b> 40:7 <b>passive</b> 14:18 16:19 17:12,15 53:1,13 <b>pause</b> 4:4 <b>pay</b> 7:23 14:3,7,8,9 18:14 <b>payments</b> 17:12,17 17:19 <b>penny</b> 39:15 <b>people</b> 4:23,23 46:18 49:16 <b>percent</b> 6:15,18 15:3 20:19,20 23:16 55:6 <b>perfect</b> 23:1 32:17 62:8 <b>perfectly</b> 40:13 <b>period</b> 19:22 42:8 53:21	

[practical - sales]

Page 10

<p><b>practical</b> 11:3 59:19 59:19 60:23 <b>pre</b> 15:11 <b>prefer</b> 33:24 <b>prepared</b> 52:15 <b>present</b> 22:17 <b>presentation</b> 18:5 41:5 <b>presently</b> 36:1 <b>presumably</b> 41:15 <b>presumed</b> 14:4 30:10 <b>prevent</b> 45:2 <b>principal</b> 35:16 37:1 <b>private</b> 35:3 <b>problem</b> 50:19 <b>problems</b> 21:19 <b>procedure</b> 60:10 <b>proceeded</b> 16:7 <b>proceeding</b> 2:4 4:13 12:6 <b>proceedings</b> 8:24 62:18 63:5 <b>process</b> 29:18 <b>prodding</b> 25:19 <b>profit</b> 14:7 51:9 53:10 <b>profits</b> 35:8,12 37:1 37:2 38:21 42:22 43:2 53:11 <b>promissory</b> 17:8 <b>prong</b> 53:14 59:5 <b>proof</b> 27:16,19,20 27:23 30:1,5 <b>properly</b> 23:3 <b>protect</b> 30:13 <b>protecting</b> 48:15 <b>protections</b> 13:1 <b>prove</b> 21:22 24:14 39:25 <b>provides</b> 20:24 <b>provision</b> 59:10,12 <b>psychologist</b> 4:17 24:1 29:9 30:8 46:4 <b>public</b> 35:3 48:10</p>	<p><b>pulled</b> 44:8 <b>purported</b> 18:12 <b>purpose</b> 6:19 13:16 15:1 52:3 58:12 <b>purposefully</b> 53:19 <b>purposes</b> 35:23 <b>put</b> 20:14 22:12 23:13,14 29:19 31:19 32:9 34:4 35:21 36:7 37:21 41:1 42:6,9 43:13 43:15 46:1 48:15 50:12,17 <b>putting</b> 23:25 52:20</p> <p><b>q</b></p> <p><b>qua</b> 10:8 <b>quality</b> 15:15 <b>quantity</b> 15:15 <b>question</b> 6:7 7:13 7:25 8:6 9:9,10 10:4,18 13:24 16:2 18:15,17 22:2 25:22 26:4 27:25 28:23,25 30:17 31:8 32:16,18 36:17 46:8 48:20 57:21 <b>questions</b> 57:14 <b>quick</b> 42:17 <b>quinn</b> 50:13 <b>quint</b> 31:20 32:10 48:15 <b>quite</b> 9:14 37:14 <b>quote</b> 12:21 15:5 16:18 17:11 18:11 23:6 24:7 25:6,8 32:24 <b>quotes</b> 24:5</p> <p><b>r</b></p> <p><b>r</b> 1:23 3:1 4:1 63:1 <b>raised</b> 31:16 47:8 <b>rate</b> 15:3 20:18 <b>read</b> 12:4 29:10 30:23 35:20 <b>really</b> 18:17 40:3 41:2 46:12 49:5 50:14 59:23</p>	<p><b>reason</b> 6:10 11:3 23:10 32:23 33:6 36:17 42:24,25 43:3 44:24 45:15 47:19 47:22 48:7,7 <b>reasons</b> 33:25 35:5 45:16 48:22 50:9,10 <b>rebuttal</b> 31:3 <b>receipt</b> 14:18 16:19 25:17,17 43:2 53:2 53:13 <b>receive</b> 51:24 <b>received</b> 16:14 30:11 51:14,20,23 <b>receives</b> 9:10,11 <b>receiving</b> 17:16,19 52:21 53:11 <b>recognizes</b> 51:6 <b>recollection</b> 59:9 <b>record</b> 4:19 5:7 19:11,13 23:2 32:11 56:16 57:15 60:4 63:4 <b>records</b> 40:4 54:20 <b>recover</b> 35:25 38:11 38:12,19 <b>recovery</b> 16:13 <b>reference</b> 55:2 <b>regarding</b> 18:18 19:6 24:24 39:9 55:23 60:22 61:8 62:15 <b>registered</b> 52:17 <b>rejected</b> 57:1,9 <b>relative</b> 40:7 <b>relatively</b> 36:22 <b>relevant</b> 6:9 17:1 25:8 40:2 57:24 58:4,12 <b>relied</b> 23:9 <b>relies</b> 18:2 <b>remained</b> 55:14 <b>reminding</b> 20:11 <b>report</b> 61:22 <b>represent</b> 4:12 33:1 <b>representations</b> 57:4</p>	<p><b>represented</b> 27:11 <b>representing</b> 28:13 <b>request</b> 7:20 8:7,9 8:12,21 16:7 17:18 <b>requested</b> 52:11 55:24 <b>require</b> 44:23 <b>required</b> 5:23 6:11 55:6 <b>requires</b> 11:20 57:12 59:6 <b>requiring</b> 40:11 <b>reside</b> 4:25 <b>resolve</b> 21:23 60:20 60:24 <b>resolved</b> 35:24 37:3 37:5 <b>respect</b> 17:21 <b>respectfully</b> 50:10 50:11 <b>respond</b> 31:17 51:4 57:19 <b>response</b> 18:23 61:18 <b>rest</b> 46:23 <b>resulted</b> 43:2 <b>return</b> 12:18 <b>returns</b> 52:14 54:20 <b>right</b> 4:2 5:4 6:4,5 6:17 7:4 8:15 9:23 10:17 25:15 31:12 36:3 37:6,15 38:2 38:24 39:5,18 41:7 51:7 54:24 55:16 56:8,21 60:7 61:2 61:17 <b>rise</b> 27:15 <b>road</b> 63:14 <b>rockefeller</b> 3:4 <b>roughly</b> 42:15 <b>rules</b> 27:22 54:10 <b>run</b> 23:19</p> <p><b>s</b></p> <p><b>s</b> 3:1 4:1 <b>safe</b> 5:25 6:13 <b>sales</b> 22:16</p>
---	---	--	---

<p><b>sanctioning</b> 47:25  <b>satisfied</b> 40:11  <b>save</b> 31:2  <b>saw</b> 22:20,23 45:8  <b>saying</b> 9:13 10:7              22:18 29:16,17 30:2              30:11 33:7 34:23              37:24 41:16,18 42:9              58:19 59:22  <b>says</b> 12:5 22:11              29:2,2,3 31:9 50:5              54:2,25  <b>schedule</b> 13:21  <b>schedules</b> 61:10,16  <b>scheme</b> 12:6 16:15              16:24 36:25 38:23  <b>science</b> 14:22  <b>second</b> 6:8 10:3              12:22 13:20 20:9              21:15 29:10 34:2              37:3,6 61:12,20  <b>securities</b> 1:8 13:7              52:9,13  <b>see</b> 7:14,16 13:21              15:12 26:9 36:16              46:8 55:19  <b>seeking</b> 53:8,9  <b>seen</b> 4:15 9:24,24              24:12 29:7 36:11              54:20  <b>selected</b> 49:11,13  <b>selection</b> 17:7  <b>sell</b> 20:12 22:18,22  <b>send</b> 8:7 16:7  <b>sent</b> 28:2 30:12  <b>sentences</b> 30:22  <b>separate</b> 26:8 39:9              39:19,22 57:13,13  <b>separately</b> 61:6  <b>september</b> 61:24              62:6  <b>serious</b> 29:8  <b>seriousness</b> 33:25  <b>settled</b> 16:19  <b>settlement</b> 57:3,6  <b>seven</b> 15:3</p>	<p><b>share</b> 52:16  <b>shelf</b> 34:3  <b>short</b> 61:7  <b>shot</b> 57:18  <b>show</b> 12:17 19:20              21:5,5 24:17 38:4,9              40:4 42:1,16  <b>showing</b> 41:9 56:5  <b>shows</b> 5:22 23:5              24:1 32:11 36:12              41:14  <b>sides</b> 10:21  <b>signed</b> 9:17 48:21  <b>significant</b> 12:24              17:19  <b>similar</b> 55:16 57:2  <b>simple</b> 8:22 28:23              28:25 30:18  <b>simply</b> 9:25 12:14              20:4 21:1 23:18              25:4 60:2  <b>sine</b> 10:8  <b>single</b> 39:15  <b>sipa</b> 26:12,13,20,23              27:12,14 28:5 29:13              30:13  <b>sitting</b> 22:18  <b>situation</b> 11:23              13:13 14:11,17              16:12 24:22 25:20              28:25 29:12 30:3,6              33:11,12 34:16 35:1              40:8,15 41:9,9              42:16 43:19 45:20              47:5,18 50:3 58:8  <b>situations</b> 27:14              34:21 59:20  <b>sleeve</b> 47:16  <b>slight</b> 59:16,18  <b>smart</b> 22:5  <b>smb</b> 1:10  <b>smoke</b> 18:16  <b>societe</b> 14:21 15:1,6              16:9 53:3  <b>société</b> 17:2,3,6              24:21</p>	<p><b>sold</b> 20:19 22:22  <b>soliciting</b> 48:17  <b>somebody</b> 7:19 8:7              9:10,11 11:10 15:19              24:2 40:16  <b>sophisticated</b> 55:18              55:21 56:4  <b>sorry</b> 4:3 38:15,16              38:18 42:12 58:9              61:12  <b>sort</b> 16:7 31:19 41:9  <b>sought</b> 16:16  <b>south</b> 2:25 14:23              63:3,8  <b>southern</b> 1:2  <b>speak</b> 4:6 42:19  <b>speaks</b> 19:12 45:19  <b>special</b> 6:21 9:21              32:25  <b>specific</b> 10:25 11:9              11:14,15,20 24:15              52:11  <b>specify</b> 52:7,8  <b>speed</b> 34:9  <b>spend</b> 41:4  <b>spent</b> 31:4  <b>stand</b> 15:23  <b>stands</b> 10:22 36:1              51:7  <b>start</b> 12:11 14:21  <b>started</b> 39:1,2  <b>state</b> 11:10,11,12,13              17:24 53:16 59:11  <b>stated</b> 12:21 23:2              32:23 33:6  <b>statement</b> 21:10              22:20 23:20 27:22              32:9 55:20,21 56:4              60:11 61:6,7  <b>statements</b> 17:13,17              18:7,10,15,19 19:16              19:23,24 22:8,13              23:25 24:9 60:14  <b>states</b> 1:1 5:2 10:15              11:6,7 25:7 47:9              49:23 51:16 52:13              53:9 58:2,7</p>	<p><b>statute</b> 11:19 31:9              31:22 32:6 44:25              45:2 50:13,17,19              54:22  <b>stipulate</b> 32:4  <b>stock</b> 24:10 52:13  <b>stocks</b> 24:12  <b>stolen</b> 16:20  <b>stood</b> 15:19,22  <b>stop</b> 19:4  <b>straightforward</b>              36:23  <b>strategies</b> 21:2              55:16  <b>strategy</b> 23:6,14,18              23:21 24:2,8 55:18              56:6  <b>strict</b> 35:8 41:5              51:10  <b>strongly</b> 35:4  <b>stuart</b> 1:24  <b>student</b> 4:17 29:10  <b>stuff</b> 36:18 55:25  <b>subject</b> 5:19 9:6,7              9:19 29:14 30:2,15              36:25 53:6,21 55:12              55:15  <b>submission</b> 23:4,5  <b>submissions</b> 61:4  <b>submit</b> 27:16 28:10              29:4,22 60:11 61:6              61:18  <b>submits</b> 27:23  <b>submitted</b> 27:1              32:21,21 62:10  <b>subsequent</b> 19:25  <b>subsequently</b> 25:1  <b>substance</b> 46:25  <b>successful</b> 46:21              47:25  <b>successfully</b> 44:15  <b>succession</b> 1:11 2:2  <b>sued</b> 30:12 46:17              49:16  <b>sufficient</b> 7:12 25:5  <b>suggestion</b> 56:22</p>
--	--	--	---

[suggests - two]

Page 12

<p><b>suggests</b> 53:19  <b>suing</b> 51:8  <b>suite</b> 63:15  <b>suites</b> 15:9  <b>summary</b> 18:20  60:9  <b>supplemental</b> 18:20  21:6,10 22:8,12  31:17 32:9 56:1,2,3  <b>support</b> 11:6 12:10  19:18 22:10  <b>supports</b> 60:5  <b>supposed</b> 18:18  <b>supposedly</b> 23:14  <b>sure</b> 32:1 34:11  36:20 43:6 47:15  51:17 54:7,9 60:19  61:21 62:2  <b>suspect</b> 49:2  <b>suspense</b> 50:18  <b>sweeping</b> 18:7,10  19:16 23:20  <b>swiss</b> 45:12  <b>switzerland</b> 45:10</p>	<p><b>taxed</b> 20:18,20  <b>taxes</b> 7:23 8:21 14:3  14:7,8 22:25  <b>tell</b> 7:1 19:3 34:5,6  38:5 43:23 58:2  <b>telling</b> 9:9 16:6 19:5  20:11 50:15  <b>tells</b> 47:16  <b>ten</b> 43:14  <b>tension</b> 21:20  <b>terms</b> 36:18 37:2  <b>terrorist</b> 13:17,19  <b>test</b> 13:20  <b>testified</b> 20:11  22:20 23:17 24:7  40:12 54:6  <b>testify</b> 45:5,22  <b>testifying</b> 45:3  <b>testimony</b> 20:14,16  23:12 27:12 44:24  47:12  <b>texas</b> 28:3 30:13  <b>thank</b> 4:9,22 22:4  31:7 50:24 62:1,11  62:12,13,16,17  <b>theory</b> 7:6 46:13  <b>therefrom</b> 52:14  <b>thing</b> 8:18 40:6 59:4  59:25  <b>things</b> 8:19 36:21  51:5 53:25  <b>think</b> 6:8,16 7:25  10:13 11:2 13:15  15:14,19 17:1,22,23  19:16 20:19 23:22  23:25 24:3 25:20  26:6 28:24 29:20  30:14,18,19 33:9,13  33:21 34:1 39:22  40:5,15 41:1,25  42:9 43:10 44:1,19  44:22 47:2,3,6,19  48:11,12 49:15,24  50:4 52:23 53:23,25  54:4,5,12 55:2,17  56:3,9,11 58:5,12  59:16,18 60:3 62:5</p>	<p><b>thinking</b> 26:3  <b>thinks</b> 54:12,13  <b>thought</b> 12:2 38:15  44:7 45:8 46:16  47:17 54:10 55:5  57:21  <b>thoughtful</b> 60:2  <b>thoughts</b> 28:21  <b>three</b> 20:1 55:24  <b>time</b> 5:12,14,16  8:11 13:22,23 23:24  27:12 30:9 31:13  35:16 42:2 43:20  44:3 48:2 50:4  56:18 59:12  <b>times</b> 17:15 22:18  <b>title</b> 27:21  <b>today</b> 4:10 45:21  61:18  <b>told</b> 14:12 24:11  36:11  <b>top</b> 54:8  <b>tort</b> 59:9,15,22  <b>tortious</b> 53:14  <b>total</b> 19:21 21:4  <b>tracy</b> 3:9 51:2  <b>trading</b> 23:6 24:2  55:16,18  <b>traditional</b> 47:3  <b>transacting</b> 53:15  <b>transactions</b> 13:15  38:8  <b>transcribed</b> 2:25  <b>transcriber</b> 63:8  <b>transcript</b> 63:4  <b>transfer</b> 6:25 9:11  39:19,22,23 41:15  49:8 51:7,8 56:13  57:8  <b>transferred</b> 13:14  38:20 50:11  <b>transfers</b> 12:2  17:20 25:14,18 36:1  38:9 39:11 51:21,25  52:21 56:24  <b>transform</b> 56:14</p>	<p><b>treasury</b> 5:24 20:12  20:17 22:16,21  24:11 42:6 55:2,4,7  <b>treated</b> 57:9  <b>trial</b> 26:6,8 46:10  <b>trials</b> 47:11,15  <b>true</b> 31:24 44:5,11  46:18 48:2 58:23  63:4  <b>trustee</b> 1:6 3:3 5:1,8  10:23 11:4,19,22  12:9,13 16:17 17:5  18:1,6,10,19 19:17  19:20,21 20:13,14  20:25 22:11,15,16  23:5,8 26:22 27:4  31:16 32:21 33:1,6  33:8,13 34:11,17,24  35:19,20,25 36:10  36:23 38:10,14,17  38:22 39:7,8,8  40:25 41:4 43:1,6  45:1 46:1,21 47:24  48:5,6,8,23,25 49:3  49:4,11,13,25 51:2  54:2 58:1,9,10,14  58:16,20 60:11  <b>trustee's</b> 7:1,5  10:15 21:6 22:8  23:3,4 27:13 29:14  32:20 33:15 39:14  46:21 58:6  <b>trustees</b> 13:3,8  14:13  <b>truth</b> 14:6,10  <b>try</b> 26:8 33:8,19  60:7  <b>trying</b> 9:15 21:3  23:12 38:12 42:15  49:25 56:6,25  <b>tugs</b> 47:16  <b>turn</b> 6:1 26:11  61:19  <b>turned</b> 6:3  <b>twice</b> 54:7  <b>two</b> 10:24 24:4 35:5  36:1 38:9,20 39:11</p>
<p><b>t</b> 63:1,1  <b>taiwan</b> 24:24  <b>taiwanese</b> 24:23  25:1  <b>take</b> 32:19,20 42:5  <b>takeaway</b> 23:22  <b>taken</b> 40:13 42:2  55:8,11 57:5  <b>talk</b> 15:13 26:10  35:5 51:15 60:23  <b>talked</b> 17:6 23:2  28:14 29:25 31:21  53:1,12,13 54:1  <b>talking</b> 16:9 22:15  32:18 39:2 44:20  45:18 46:15,25 47:1  53:15  <b>tampa</b> 14:25  <b>tax</b> 14:10 20:5,6  23:12,18 54:11,14  54:18,20</p>			

[two - york]

Page 13

43:16 45:15 47:25 51:8,14,20 61:15,17 <b>type</b> 17:5	<b>use</b> 13:16 34:22 46:11 47:11 50:5,6 50:6	<b>ways</b> 24:13 47:10 50:2	<b>y</b>
<b>u</b>	<b>ust</b> 52:16 <b>usually</b> 15:7	<b>we've</b> 20:24 24:18 46:1	
<b>u.s.</b> 1:15,25 34:5 45:19 49:7 52:17 55:4	<b>v</b>	<b>wealth</b> 7:23 8:21 14:3	<b>yeah</b> 7:21 30:23 37:10 39:7 59:2 60:16 62:4,8
<b>ugc</b> 57:22	<b>v</b> 1:10	<b>week</b> 22:21	<b>year</b> 6:18 19:22 31:9 42:4,8 51:8,14 54:7
<b>ugcc</b> 32:22 34:2 48:6	<b>vacation</b> 61:10,15	<b>weeks</b> 61:15,17	<b>years</b> 5:13,19 6:2 10:24 16:4 17:20 18:16 31:10 36:2 38:9,20 39:11 42:6 46:5 51:20 53:21 61:13
<b>uk</b> 45:13	<b>value</b> 14:4 35:13,15 35:17,20 36:3,4,5,6 36:6 37:16,19 40:23 42:10 43:11,17 47:1	<b>weigh</b> 34:1 35:4	<b>york</b> 1:2,17,17 3:5 3:15 5:3,21 7:12,22 8:12,25 9:2,3,4,12 9:20,25 10:8 11:8 12:10,13,14,20,23 13:1,4,9,9,12,14,15 13:16,16 14:14,18 15:1,7,20,24 16:15 17:8,11,11,24 18:3 19:21 24:16,25 25:2 25:9,18 30:12 33:19 33:23 34:19,25 47:21,24 49:2,12,13 49:19 51:11,25 52:1 52:4,10,19 53:4,16 53:20 59:21,22
<b>unavailable</b> 46:11	<b>various</b> 24:13	<b>went</b> 43:24	
<b>uncontested</b> 52:3	<b>veritext</b> 63:13	<b>whatsoever</b> 47:23 52:7	
<b>undercalculated</b> 20:6	<b>versus</b> 13:2,7,11 14:21 16:11 18:1 36:6,8	<b>whistles</b> 30:2	
<b>undercut</b> 41:24	<b>video</b> 47:11	<b>wife</b> 57:4	
<b>undercuts</b> 58:5	<b>videoconference</b> 46:10 47:10	<b>william</b> 2:25 63:3	
<b>underlying</b> 56:10	<b>videotape</b> 46:10,23	<b>willing</b> 52:12	
<b>understand</b> 7:5 17:16 21:20 35:18 36:10 40:21 44:18 44:18 58:18 59:1	<b>videotaped</b> 46:9	<b>winner</b> 28:17 36:8	
<b>understanding</b> 11:13 36:13	<b>view</b> 22:7 39:14	<b>wire</b> 17:19	
<b>understands</b> 56:12	<b>violating</b> 59:2	<b>wishes</b> 52:8	
<b>understatement</b> 33:11	<b>vulnerable</b> 30:9	<b>withdraw</b> 8:8,10,13 14:8 20:7	
<b>understood</b> 7:18 8:2 30:14 46:19	<b>w</b>	<b>withdrawal</b> 8:11 13:23	
<b>undisputed</b> 54:25 61:8	<b>waivable</b> 32:12	<b>withdrawals</b> 7:16 8:3,6,7 16:4 42:25 54:8 55:24	
<b>undoubtedly</b> 4:15	<b>waived</b> 50:16	<b>withdrawn</b> 57:5	
<b>unfortunate</b> 14:6 14:10	<b>walk</b> 12:16	<b>withheld</b> 54:21	
<b>unfortunately</b> 46:18	<b>want</b> 5:6,7 7:6 8:18 10:2,2 26:10,12 31:25 37:7 38:4 54:17 55:3 59:4 61:6 62:2	<b>witness</b> 45:6 46:11 47:16	
<b>unique</b> 4:16 40:15 41:9	<b>wanted</b> 5:17,18 6:12 17:2 26:25 50:21 51:4 54:24	<b>witnesses</b> 35:6 36:22 41:21 44:23 51:10	
<b>united</b> 1:1 5:2 11:6 11:7 47:9 49:23 51:16 52:13 53:9 58:1,7	<b>wants</b> 22:1 58:1 62:5	<b>wondering</b> 18:24	
<b>unrebutted</b> 9:5 13:25 54:25	<b>warning</b> 30:2,12	<b>word</b> 17:14 32:19 32:20	
<b>unusual</b> 33:10 43:18	<b>warren</b> 3:12 4:12	<b>work</b> 4:24	
	<b>way</b> 24:17 29:19 38:22 40:22 41:18 43:11,17 46:14 47:3 49:15 60:20,23	<b>worker</b> 46:7	
		<b>world</b> 29:9 33:12	
		<b>wrongfully</b> 16:13 16:13	
		<b>wrote</b> 20:4 23:5 55:24	
		<b>x</b>	
		<b>x</b> 1:3,14	